United States Court of Appeals

for the Second Circuit



APPELLANT'S APPENDIX

77-1006

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

vs.

RAYMOND GRABER,

Defendant-Appellant.

APPELLANT'S APPENDIX

Volume 1, 1a - 258a

CAHN & CAHN, P.C.
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UNITED STATES COURT OF APPEALS
FILED
FEB 10 1977
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SECOND CIRCUIT

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RIMINAL DOCKET - U.S. District Court

DOCKET ENTRIES (pp. 1a-3a)

JUDGE/MAGISTRATE Assigned: 0713 / 207 1 (District / Office) — Disp./Sentence

vs.

76 CR 166

GRABER, RAYMOND -1

(LAST, FIRST, MIDDLE)

Case Filed: Mo 3 Day 5

No. of Defs: 1

DOOLING, J.

76-163

Year 76 | 166 Docket No. | 1 Def.

U.S. MAG. CASE NO.

U.S. TITLE/SECTION: 18-1623

OFFENSES CHARGED: Did interfere with interstate commerce by extortion

ORIGINAL COUNTS: 1

CLOSED

SUPERSEDING COUNTS

BAIL • RELEASE

Denied | Set AMT $ 000 | Fugitive | Pers. Recog | PSA

conditions: 10% Deposit | Surety Bond | Collateral | 3rd Prty Cust | Other

Date

Bail Not Made

Status Changed (See Docket)

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began

Summons Served

First Appearance

In Charging District

High Risk Date

Indict. Waived

INDICTMENT — Information 3-5-76

Superseding Indict/Info

ARRAIGNMENT — 3/18/76

1st Plea

Final Plea

Trial Set For

NG G NOL

G. Plea W/Drawn

TRIAL

Voir Dire

Trial Began

Trial Ended

SENTENCE

Disposition of Charges

Convicted | Acquitted | Dismissed

On All Charges | On Lesser * Offense(s)

WOP | WP

On Government's Motion

MAGISTRATE

	DATE	INITIAL NO.		INITIAL/NC	OUTCOME
Search Warrant: Issued / Return			INITIAL APPEARANCE DATE ▶		DISMISSED
Summons: Issued / Served			PRELIMINARY EXAMINATION OR REMOVAL HEARING: Date Scheduled ▶ / Date Held ▶		HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
Arrest Warrant Issued					HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT RE (Rule)
COMPLAINT ▶			WAIVED / NOT WAIVED	Tape Number	
OFFENSE (As Charged)			INTERVENING INDICTMENT		

U.S. Attorney or Asst.: AUSA James O. Druker

ATTORNEYS (Def.): [redacted] Cahn & Cahn, 106 East Main St. PO Box 680, Huntington, N.Y. 11743, 516-427-3050

DATE	(DOCUMENT NO.) PROCEEDINGS
3-5-76	Before Mishler, Ch J - Indictment filed (1)
3/18/76	Before DOOLING,J.- Case called- deft and counsel present- deft arraigned and enters a plea of not guilty- deft O.R. - bail limits extended to continental U.S- trial set for week of 8/9/76 to follow trial in 76CR165
3/18/76	Notice of appearance filed
3-19-76	Stenographers transcript filed dated 3-18-76 (placed in 76 CR 163)
4-9-76	76 M 595(CBE) inserted in CR file
4/21/76	Letter from John Sutter dated 4/19/76 filed (entered in 76CR 164)
7-26-76	Before DOOLING J - case called - John Sutter counsel for the deft moved to adjourn trial date to August 30, 1976 - motion granted.
8-30-76	Before DOOLING J - case called - deft not present - counsel John Sutter present - Bench Warrant ordered - execution of warrant stayed until 9-1-76 at 10:00 am
9/1/76	Before DOOLING, J. - Case called. Bench Warrant previously ordered to be executed today. (A)

IV PROCEEDINGS (continued) PAGE TWO

V. EXCLUDABLE DELAY

DATE	PROCEEDINGS
?/?/76	Before DOOLING, J. - Case called. Deft produced on a Bench warrant. Harvey Greenberg present, as counsel. Deft to be relaeased upon his exectution of a $10,00 0 P.R.B. Adjd to 9/2/76 for trial at Westbury, NY.
9/2/76	Before DOOLING, J. - Case called. Deft & Counsel John Sutter present. Deft moves for a adjournment on the advise of his docter. Motion granted. Trial adjd to 9/7/76. deft to be examined by a doctor of the govts designation.
9/3/76	Bench warrant returned & filed executed on 9/1/76.
9/3/76	By DOOLING, J. - Ordered that Dr. Francis E. Conrad is appointed to examine the deft at the Veterans Administration Hospital, Middleville Road, Northport, NY on 9/3/76 in the afternoon and that Dr. Conrad repprt to the Court the results of such examination forthwith.(Order filed.)
9/3/76	Before DOOLING, J. - Case called. AUSA Caden reported to Court in the development of the defts hospitalization, examination, etc.
9/7/76	Bench warrant returned & filed. - Executed. Arrested [illegible] 8/1/76 and brought before Judge Dooling.
9-7-76	Waiver of Jury trial filed.
9-7-76	Before DOOLING J - case called - deft & atty J.Sutter present - parties waive trial by Jury - trial ordered and BEGUN - Govts opening statement - deft moves for dismissal of the indictment - decision reserved. Trial contd to 9-8-76.
9-8-76	Before DOOLING J - case called - trial resumed - deft and counsel present - Govt rests - trial contd to 9-13-76.
9-13-76	Before Dooling J -case called - deft & counsel J. Sutter present - trial resumed - defts moves for Judgment of acquittal - motion denied - trial contd to 9-14-76.
9/14/76	Before DOOLING, J. - Case called. Deft & Counsel John Sutter present. Trial resumed. Deft rests. Both sides rests. Trial concluded. Decision reserved. Bail cont'd.
9/27/76	Stenographers transcript dated 9/2/76 filed.
10-4-76	Before DOOLING,J.-Case called-Defendant and counsel J.Sutter present-Deft moves for adjournment-Motion denied-Court finds deft guilty as charged-Bail cont'd=Deft advised of right to appeal.
10-4-76	By DOOLING,J.-Special findings of fact and General Finding Filed, finding deft guilty as charged.
10/7/76	Stenographers transcript dated 9/7/76, 9/8/76, 9/13/76, 9/14/76 filed.
10/13/76	Notice of appeal filed.
10/13/76	Docket entries and duplicate of Notice of Appeal mailed to the Court of Appeals.
11-29-76	Stenographers transcript filed 8-31-76

RECEIPT NUMBER C.D. NUMBER DATE RECEIPT NUMBER C.D. NUMBER

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DATE	PROCEEDINGS
2-6-76	Sentencing recommendation filed submitted on behalf of deft; Motion for new trial and Memorandum of Law filed in support of motion(forwarded to Chambers)
12-7-76	BY DOOLING, J- Order filed consenting to change atty to Cahn & Cahn from John Joseph Sutter, Esq.
12-10-76	Before Dooling, J.- Case Called. Deft. & Counsel present. Deft's. motion for an order setting aside the verdict, etc. argued and denied. On the verdict of GUILTY on the single count of the indictment. Imposition of sentence of imprisonment is suspended and the defendant is placed on probation for three (3) years and fined $1,000.00. Execution of the sentence is stayed pending appeal. Deft. advised of his right to appeal.
12-10-76	Judgment and Order of Probation filed. Certified Copies to Probation.
12/16/76	Notice of Appeal filed.
12/16/76	Docket entries and duplicate of notice of appeal mailed to the C of a.
12-30-76	Stipulation filed that the appeal taken on October 13, 1976 be withdrawn and that the withdrawal is not intended to affect the notice of appeal taken 12-16-76 from the Judgment of conviction.
1-5-77	Stenographer's Transcript dated December 10, 1976 filed.
1-10-77	Order filed received from the Court of Appeals that the record be docketed on or before January 11, 1977.
1/11/77	Record on appeal certified and hand delivered to the C of A by Douglas M. McNally.
13-77	Acknowledgment received from the court of appeals for receipt of Index to record on appeal.
/4/77	Stenographers transcript dated 9/1/76 and 10/4/76 filed.
/7/77	Supplemental Record on appeal certified and mailed to the C of A.

JOD:sd
F. #761312

INDICTMENT (Filed March 5, 1976)
(pp. 4a-8a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Dooling J

- X

UNITED STATES OF AMERICA

- against -

RAYMOND GRABER,

Defendant.

- X

INDICTMENT

Cr. No. 76 CR 111
(T. 18, U.S.C., §1623)

THE GRAND JURY CHARGES:

On or about the 11th day of July 1975, in the Eastern District of New York, RAYMOND GRABER, the defendant, having taken an oath that he would testify truly before a duly empanelled Grand Jury of the United States of America, did wilfully and knowingly and contrary to said oath, state material matters which he knew to be false, that is to say:

1. At the time and place aforesaid, the Grand Jury was conducting an investigation to determine whether there had been committed in the Eastern District of New York and elsewhere violations of the laws of the United States by RAYMOND GRABER and others, to wit, interference with interstate commerce by extortion, in violation of Section 1951, Title 18, United States Code, and conspiracy against the right of citizens, in violation of Section 241, Title 18, United States Code,

2. It was material to the investigation then being conducted by the Grand Jury to determine whether or not RAYMOND

GRABER ever suggested to any Town of Hempstead employees that they should give a portion of their annual salaries to the Republican Finance Committee and whether or not he had ever approached any Town employees to solicit such contributions.

3. At the time and place alleged in paragraph one herein, RAYMOND GRABER appeared as a witness before the aforesaid Grand Jury and then and there being under oath, testified falsely before the Grand Jury with respect to the aforementioned matters as follows:

* * *

"Q. All right. Now, did you play any role within your department in actively soliciting these contributions from employees under you at any time?

A. Okay. I don't want to be hairy about it. *** In 1966 when I made my contribution, everybody gave their contributions to then Director, now Commissioner, Udell.*** The following year Commissioner Udell, his current title, said to me, 'Ray, I'm pretty well tied up. As you know I am also teaching at Suffolk Community College. I would like you to transmit - this is the point I am making - transmit campaign contributions.' And people-- then some of them did give them to him and he gave them to me and as I understand, we did have a few facilities in the hinterland. You will find that in August or September in all of these various facilities, people will say, 'Is now the time to contribute?' So he advised them, give it to me. All right? Each and every ensuing year, I was

the transmitter. *** Now, I'll break down and get direct to it. I would never be so presumptuous just as I have at times in my community rang doorbells, I would never be so presumptuous in the community even if I knew a man was--to say, 'You ought to give five dollars or ten dollars.' Neither would I be so presumptuous to say to anybody that, 'You should give one percent.' Additionally, as one example, and I can give you many, sir, when my own secretary came [to me]*** she said, 'Mr. Graber, what is everybody talking about? What is one percent?' And I said, 'Vicky, you have to get that information from somebody else.' In other words, feeling in my position, that I should not be the originator of such a thing.

* * *

Q. A number of employees have testified that you would come around and give them a three-by-five or a similar card on which it would have their name, their salary, and a handwritten notation somewhere on the card which was a figure representing one percent of their salary. Now, first of all, has that occurred?

A. No, not in the manner and the way that you said it.

Q. All right. Would you relate your recollection?

A. We're talking about 1966, you know, since this is only '75 through '74. I have previously stated that comes August or September and 95% to 98% of the department I am with, employees are in hinterland buildings scattered all over.

I rarely see them. I have no direct communication with them. I have never solicited them. Okay? But as August and September come around, individuals and supervisors start calling up or coming in and believe it or not, sir, many of them although they know if they've had overtime and their check is not correct, do now know their annual salary. If somebody asks for their annual salary, they will get it.

Q. All right. And then you write it down?

A. If somebody will ask either in person or by phone, 'Will you figure out one percent for me?', he has to take the initiative or in some cases it is his supervisor who will come in any say, 'John, Bill and Joe all want to know that they make,' or 'John and Bill want to know what they make and Joe wants to know what one percent is.' I will have one of the girls write it out for them. Okay?

Q. And then do you give it to them?

A. I have given it to individuals and in some cases to their supervisor when they took the initiative and asked me for it.

* * *

Q. So from the standpoint of what you've just said, she [Dorothy Hederick] would prepare the card for everyone in the department and then hold them so that they would be available if the individual requested it.

A. Yes. But by somewhere along the way, we have

received so many phone calls or so many requests, that I did give some to some supervisors with these instructions, so help me God! 'You have this. You've been asking for it for some. There's gonna be more. I'm too busy preparing a budget. They are only to be given to a man if he asks you a question which specifically can be answered by you.' And there was no one percent figure on those cards."

5. The aforesaid testimony of RAYMOND GRABER, as he then and there well knew and believed, was not true in that he had suggested to Town of Hempstead employees that they should give a portion of their annual salaries to the Republican Finance Committee, and he had approached Town employees to solicit such contributions.

A TRUE BILL.

_____

FOREMAN.

_____

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

9a

EXCERPT FROM MARCH 18, 1976 PROCEEDINGS (Tr. pp. 12-17)
(pp. 9a-14a)

THE COURT: One other thing which I guess we better deal with right away. That is, we'll have to do it again, I guess, but that is the question of whether it is utterly safe in the views of the Second Circuit for you to represent all four defendants.

MR. SUTTER: I see no conflict whatsoever. We have individual charges of misstatements to the Grand Jury. We don't have co-defendants. They are not charged with aiding and abetting each other in any matter. I see no conflict.

THE COURT: The only thing I would be concerned about is talking about a matter in which each man is himself his own man and entitled, for example, where the cases consolidated for trial to a very elaborate and emphatic charge on not letting the evidence against one man in any way

affect evidence against another. If the cases were tried together, I think we'd have a tremendous conflict problem because people's cases have different colorations. You are bound to make people look as if they are popping up in different points of the spectrum as the defendants must see it as innocent and the Government must see it as guilt, for lots of reasons. Their hierchal position in the structure of employment, their allegiance to the party, if any, and so forth and so on.

If I were to be concerned, if represented separately at separate trials, but two main areas; first, counsel views of the case are formed very largely on the basis of what his client tells him, what he's able to learn in his own investigation.

I wonder if it is safe to have four cases in which you are learning things from four different men who may have different situations both in the county employment structure and their relations during these periods which would impair your capacity to advise them straightly and effectively.

Finally, I would be concerned that disclosures made by one or another of your clients might in some way impair your capacity to exchange the fullest confidences with each of your other clients.

In other words, you have an attorney-client privilege with each client and although it seems knowledgable with each client and yet what you have privileged knowledge of and undisclosable knowledge of could be relevant to an impingement, fears you might harbor in the advise that you might feel you ought to give or free to give other defendants, and which might indeed effect the inquiries that you pursue with that defendant in light of what you heard from another defendant.

These are the areas of my concern which I think we have to elaborate fully and in the presence of the clients.

MR. SUTTER: If your Honor please, may I assure the Court, No. 1, although I'm not involved in any political party activities whatsoever, I have, through outside research, let me say in recent representations become quite familiar with the internal functions of the party of which these gentlemen are members.

THE COURT: If they are.

MR. SUTTER: Okay, if they are.

THE COURT: That, too, may be in issue at some point.

MR. SUTTER: I'm also well aware of the

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sensitivity of your Honor, this entire court and the Court of Appeals for this Circuit with respect to conflicts and I'm acutely aware of them, if your Honor please. I don't see any conflict -- none of these gentlemen work with each other. They are all in different departments in municipal government.

THE COURT: That's perfectly clear, not in the same employment structure, any of them.

MR. SUTTER: No, other than that town or county employees.

THE COURT: Both town and county.

MR. DRUKER: I realize, Mr. Sutter, -- I don't know whether he has to answer it or not, but it might help shed light on the issue. If these defendants without going into the amounts or fees or anything, if Mr. Sutter is their own retained counsel and they are paying his fee, that would be less of a problem here than if there's one entity, for example, the Nassau Republican Party as paying their fees. Then there's a real problem here.

MR. SUTTER: I would be delighted to answer that. What has occurred is that I do not represent the Nassau County Republican Committee.

THE COURT: The source of the funds.

13a

MR. SUTTER: They are forming defense funds for their own individual representation. Each one will individually receive funds, hopefully, from those who back them in their cause and will send me a checkd from that individual defense fund.

MR. DRUKER: Secondly there might be a problem with regard to the representation of Woolnough and the other three. Mr. Woolnough, during the investigation, -- he's not a town employee. He was in the hierarchy of the Republican Committee and as such he was one of the prime targets of this investigation. The other defendants, the Government sought in the Grand Jury to adduce their testimony in part as against Mr. Woolnough and against other officials of the Republican Party and in this regard there could be a possible conflict of interest here.

It may be -- I'll have to discuss it with Mr. Sutter at another time but it may be that either Mr. Sutter will have to represent Mr. Woolnough or represent the other three, but I can see a problem with regatd to his representing the four of them.

MR. SUTTER: Judge, I assure you if this comes up after Mr. Druker and I talk, we'll resolve it. I certainly don't want to be engaged in any

unethical conduct. I'm too old.

THE COURT: I don't think we're really talking about a breach of the canon of ethics, although in part that can become involved if it's conscious.

MR. DRUKER: This is something Mr. Sutter --

THE COURT: What we're talking about, really, is effective representation of the defendants, which is what they are absolutely entitled to. They have to be effectively represented.

MR. SUTTER: This is something I'm not aware of.

MR. DRUKER: This is something Mr. Sutter would not be aware of.

MR. SUTTER: I didn't represent any of these gentlemen when they appeared before the Grand Jury. They were represented by other counsel.

...docket and file. Thank you.

LETTER FROM JOHN SUTTER DATED APRIL 19, 1976 (pp. 15a-16a)

SUTTER, MOFFATT, YANNELLI & ZEVIN, P.C.
COUNSELORS AT LAW
33 WILLIS AVENUE
MINEOLA, L. I., N. Y. 11501
(516) PIONEER 7-5800

COUNSEL
JACK STRAUBS
JOSEPH G. LILLI
F. DANA WINSLOW, P.C.

GINO C. PAPA
STEPHEN L. WILLSON

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
APR 21 1976
TIME A.M.
P.M.

April 19, 1976

Hon. John F. Dooling, Jr.
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: U.S. v. Donald Woolnough (76 CR 165(S))
U.S. v. Raymond Graeber (76 CR 166)
U.S. v. August Cosenza (76 CR 164)

Honorable Sir:

Upon the arraignment of the defendant, Woolnough, before yourself, you indicated quite candidly that there is always the possibility of a conflict arising when one attorney represents multiple defendants despite the fact that they may be separately indicted. As you undoubtedly will recall, I stated to Your Honor that I had not been furnished with the Grand Jury testimony of these witnesses as was assured to me on the original arraignments held on March 18, 1976. Your Honor thereupon suggested that the United States Attorney furnish me with the Grand Jury testimony forthwith. Upon leaving your courtroom, I attended upon James O. Druker, Esq., Assistant United States Attorney, and he was gracious enough to forthwith furnish me with photostatic copies of the Grand Jury minutes of the parties. I completed my trial on an attempted murder of two police officers and spent the weekend with my family in Connecticut. During that period of time I reviewed the Grand Jury minutes and it is patent that there is a real possibility that there is a conflict of interest. In my conversation with Mr. Druker I asked, in view of the fact that he had conducted the entire proceedings, whether or not he thought there would be a conflict in representing the defendants Cosenza, Graeber and Phears (when and if he is arraigned) and he indicated that he saw no possibility of conflict if one counsel represented those three defendants.

(5)

Accordingly, I am making arrangements for separate counsel to represent the defendants Cosenza, Graeber and Phears and will make arrangements for my appearance to withdraw and the retention of new counsel on their behalf. I shall continue the representation of Mr. Woolnough and I am appreciative of the trial date of the week of July 26, 1976. Discovery pursuant to the customary letter was made on April 9, 1976 and substantive motions will be made by May 1st despite the fact that we have just recently received the Grand Jury minutes.

If there are any difficulties with respect to this matter, would you kindly communicate with the undersigned as soon as possible.

Respectfully yours,

SUTTER, MOFFATT, YANNELLI & ZEVIN, P.C.

John Joseph Sutter

JJS:bk
CERTIFIED MAIL - RETURN RECEIPT REQUESTED
cc: James O. Druker, Esq.
Assistant U. S. Attorney
225 Cadman Plaza East
Brooklyn, New York 11201

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TRANSCRIPT OF AUGUST 31, 1976 PROCEEDINGS (pp. 17a-34a)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 76-CR-166

RAYMOND GRABER, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

August 31, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE JOHN F. DOOLING, JR., U.S.D.J.

PERRY AUERBACH
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JOHN CADEN, ESQ.
Assistant U.S. Attorney

JOHN SUTTER, ESQ.
Attorney for Defendant

THE CLERK: United States v. Raymond Graber.

THE COURT: Yes, Mr. Sutter?

MR. SUTTER: If your Honor please, I have an application with respect to this particular matter. Mr. Frazer of my firm is the man who is preparing this case, and he has had extreme difficulty in communicating with this particular defendant. Not that the defendant is not responsive to the demands that he appear in our office, but when discussing the case he rambles on and goes into other areas and things that are not responsive.

I might point out most respectfully, sir, that the last time I saw this defendant was yesterday afternoon in the late afternoon, who appeared at my office upon my direction. I advised the defendant that he must appear in court today.

He told me that he was emotionally and physically unable to attend today.

I may, in all fairness to the defendant at this point, point out that he is rather emaciated at this point, extremely nervous, kept jumping on and off the chair at all stages of the proceedings when he was going over facts. The only thing we were able to agree upon yesterday was the fact that we would make an

application presumptively upon the Government's consent to waive a trial by jury and have your Honor try the case along those lines.

THE COURT: If you are trying a case that might suit, because it looks as though there are more legal than factual problems.

MR. SUTTER: Yes, sir. That is exactly the reason that I suggested it to him, and I went over that for about an hour with him, that we deal primarily with questions of law rather than with questions of fact concerning this matter, and he consented to that. He told me that he would not appear in court today, and I said, "I am directing you to appear in court today."

He said he was going to Ithaca.

Now, I do -- I don't know, I'm sorry, I have been advised by people that his son is a student at Cornell. Now, I, of course, have a warm heart because my daughter is a graduate student in pre-veterinary medicine.

Your Honor was gracious to allow me one day, because I returned from Ithaca late yesterday afternoon. I am advised he is at a place called the Sheridan.

THE COURT: Like the General?

MR. SUTTER: Yes, sir. At Ithaca, New York.

He told me he would be back tomorrow afternoon.

Judge, we have a man of great ego here, my defendant, I am talking about. A man who is extremely upset, extremely nervous, and is obviously trying to avoid the due processes of the law.

I would respectfully request accordingly that in view of the fact that we will execute a waiver of trial by jury --

THE COURT: He has to sign that, you know.

MR. SUTTER: Yes. But he's agreed to do that. He did that yesterday afternoon at approximately 5:30. He has agreed to that, but we are saving at least one trial date. I apologize on behalf of my client, but I think, Judge, when you get in this case and you observe him you will find what his problems are. You will see what type of a person he is. He's not an ordinary run-of-the-mill type of defendant. He's highly complex. He has a secretary who is a former Law Secretary who second-guesses me on the defense strategy. She obviously knows more about criminal defense than I do, or at least he believes so. So I respectfully request we adjourn the matter to Thursday afternoon and commence the trial at that point without a jury.

THE COURT: How long do we think the trial will take, gentlemen?

MR. CADEN: Your Honor, the case as I see it, I plan to call approximately ten, perhaps twelve witnesses.

MR. SUTTER: That would be short.

MR. CADEN: And they will be fairly short.

THE COURT: Their testimony would be?

MR. CADEN: Yes. Each witness would probably be between fifteen minutes to at least a half-hour at the most. But most witnesses will be at least fifteen to twenty minutes on direct examination.

MR. SUTTER: Cross-examination will be short, too, your Honor.

THE COURT: I think I noticed in the Stefano letter, that he talked about his unwillingness to travel to Brooklyn, and his real problem, as you know, we can get space in Westbury, where your witnesses will be coming from.

MR. SUTTER: They will all be from Nassau.

THE COURT: Would it be an inconvenience to promise the case in Westbury? I can't.

MR. SUTTER: Judge, the problem with him is if he gets onto any means of public conveyance he gets into cold sweats and things like that. I don't think he's a nut, and you can put that in quotes, please, but

he certainly does have hang-ups.

THE COURT: Would it facilitate matters if it were tried in Westbury?

MR. SUTTER: Judge, everybody in this case, so far as witnesses are concerned on both prosecution and defense, and correct me if I am wrong, please, John, to my knowledge are residents and employees in the County of Nassau. See, if he does agree to a non-jury trial, and that is satisfactory to the United States Attorney, that would greatly facilitate trying it in Westbury. But then all we have to do is make sure we have a courtroom, and I think probably Judge Weinstein is finished using it. I am not sure, but I can check with his chambers.

MR. CADEN: I was out there last week, your Honor, and he is no longer in Westbury.

THE COURT: He's on vacation at the moment, I think.

MR. CADEN: Yes. And in addition, I know there are other rooms, other courtrooms that they have referees or judges in bankruptcy use.

THE COURT: Which could be very easily used for a non-jury trial.

MR. CADEN: And adapted for our purposes.

THE COURT: Would that ease matters any?

MR. CADEN: Certainly, in view of the fact that I brought in six witnesses today that traveled from points such as Point Lookout, which is a considerable distance away, they would prefer probably the case be tried in Westbury.

THE COURT: Where is Point Lookout?

MR. SUTTER: Point Lookout is right next to Long Beach, your Honor.

THE COURT: That's what I thought.

MR. CADEN: I think from my point of view I would prefer to try the case in here, in Brooklyn.

THE COURT: I take it you don't live in Long Island.

MR. CADEN: I certainly do not, but I can arrange my schedule to be out there if the Court thinks it's in the interest of justice. I can handle that.

THE COURT: Make --

MR. CADEN: I would like to talk to the United States Attorney about that before I make that decision. I, myself, have no personal reasons to not go to Westbury. I will be more than happy to. It distresses me what Mr. Graber did.

MR. SUTTER: It disturbs me, too.

MR. CADEN: I am not saying it doesn't disturb

you, Mr. Sutter.

THE COURT: What are we going to do at this point? It's easy enough to get the marshal in the Northern District to fetch him in. No problem with that. It can be done by telephone. We can teach him a lesson, but is that the way to start the case?

MR. CADEN: I have never started a case like that. But I have never been posed with such a strong defendant.

THE COURT: The only argument that's made for that is that the man is a neurotic and maybe the whole world has to bend around people. I don't like it. Nobody likes it. I have often thought that maybe all of us ought to have a few roads in reserve that we can explore on occasions of difficulty and impasse, and make life very easy for us all. Most of us haven't got the patience to develop it to facilitate its passage through life. Perhaps Mr. Graber has. But the trouble is, see, we couldn't really get rough with Mr. Graber in the face of Dr. Stefano's letter without getting a competing letter, so that we could get a controversy over that. I am not sure, it isn't worth more than winning an argument of whether he is or is not a genuine neurotic.

MR. SUTTER: Judge, if I may, as a layman, I believe he's a genuine neurotic, but he's not a psychotic.

THE COURT: If you're a psychotic, you can really be in irons. So why don't you gentlemen convene in the matter?

MR. CADEN: It won't take me that long, and the United States Attorney and I can be back within ten minutes.

THE COURT: If you want to wait here in the courtroom?

MR. SUTTER: I must say, I apologize again on behalf of my client. I don't like it, either, because I had to appear here, and I drove from Mineola with this.

THE COURT: That's not so far.

MR. SUTTER: No. I am not complaining about that.

THE COURT: Not the last week of August.

MR. SUTTER: As a matter of fact, the traffic was good, sir.

(Whereupon, a recess was taken until 10:45 A.M.)

THE COURT: Yes, gentlemen?

MR. CADEN: Your Honor, thank you for being so

patient. I have had the opportunity to speak with the United States Attorney and the Chief Assistant, and I advised him about what happened here this morning, and in addition, I spoke to several people who are in my office who know the defendant on a personal basis, and I have been advised that these witnesses apparently knew as early as last week that Mr. Graber intended to take a vacation, and that he did not intend to appear here for trial, and he put his personal plans above being tried here.

As a result, I have also been advised that within the last six months Mr. Graber has never taken a sick day, and his attendance has at all times been good.

Also, Mr. Sutter has been kind enough to advise me when Mr. Sutter asked him to come to his office he never missed. Having advised the U.S. Attorney of all of that, I feel constrained to know that on Thursday morning at 10:00 A.M. that the defendant is, in fact, where he's supposed to be, which I gather is the United States District Court located now in Westbury. My proposal is, I make an application for a bench warrant now, but the execution to be stayed until 10:00 A.M. tomorrow morning with the understanding that Mr. Sutter advise Mr. Graber that there is a

bench warrant outstanding, and that we would like to know and we would like to have him back in Westbury at home by 10:00 A.M. tomorrow morning. This would be the understanding, as I see it, that we can try this case as expeditiously as possible, because I fear from what I heard Mr. Graber may not be back on Thursday, and this particular fruitless meeting we have will repeat itself Thursday morning in Westbury, and I would like to know before the end of the day, if possible, if Mr. Graber is coming back, and we would like him back at 10:00 A.M.

MR. SUTTER: May I?

If your Honor please, this was unbeknownst to me until Mr. Caden advised me, and I am sure he doesn't indicate I had any knowledge of whether Mr. Graber has stayed in his office.

MR. CADEN: Definitely.

MR. SUTTER: I would most respectfully point out to the Court what I consider to be a viable alternative. If your Honor please, as the Court knows and was gracious enough to allow me, my daughter is in Cornell, and we get all this literature. I have a good idea of what the schedule is there. Today is the matriculated student registration, and they have parents' orientation which runs through to a supper. I can't assure the

Court, but I may not be able to get ahold of Mr. Graber until about seven or eight tonight. Mr. Caden has been gracious enough to give me his home telephone number; as soon as I communicate with Mr. Graber I shall call him. But coming down from Cornell at this stage, Judge, with 18,000 students and approximately 25,000 parents, you can't get an airline reservation out. We had to take a car to go up. I believe Mr. Graber went by car. I am not sure.

Now, for me to call him at eight o'clock and make him take a seven-hour drive to come down for trial tomorrow morning at ten o'clock I think is rather an onerous task in his condition. I would suggest, if your Honor please, that when I reach Mr. Graber this evening that I be permitted to call Mr. Caden with the specific instructions that I have reached him up there, and direct him to return to my office by no later than four o'clock on Wednesday so we can commence Thursday, and I will call Mr. Caden as soon as he arrives.

THE COURT: Well, I don't see how you can get anywhere with Mr. Graber unless you were able to tell him there's a warrant out for him.

MR. SUTTER: I intend to tell him that, Judge. I am sorry, I didn't put that on record. The statement

of Mr. Caden that I was to advise Mr. Graber that there's a warrant issued for his arrest will be made by me. I have agreed to that with Mr. Caden.

THE COURT: Well, I think that I must authorize the issuance of a warrant, both to the marshal of the Eastern District and to a marshal of the Northern District, but the execution to be stayed until 10:00 A.M. tomorrow, and at that time if there's any -- even the slightest semblance of resistance or will to evade on the part of the defendant, the warrant will simply have to be executed. If he's still in Ithaca it can be executed by the marshal of the Northern District. If he is in the Eastern District, by the marshal of the Eastern District. But we must go forward on Thursday morning.

MR. SUTTER: Judge, I understand that. My only point was if I can assure --

THE COURT: I should tell you to also tell Mr. Graber that you have been in my courtroom long enough, and often enough to know that as nearly as possible the trial will be a peaceable episode.

MR. SUTTER: I appreciate that, Judge.

THE COURT: I am not an ogre on the bench, and I do not terrify anybody. I cannot even terrify my own children. I don't really think -- and I should say to

you -- that I am reasonably satisfied that people who bear the ordinary stresses of life without difficulty seldom have any difficulty in the courtroom. It's no different from any other episode in life. Indeed, after the first moment, after the trial was called, the thing moved at a pedestrian, slow pace, and it is restful and the real problem will be staying a week.

MR. SUTTER: Judge, may I say this: I had no alternative other than to come in this morning and tell your Honor exactly what happened.

THE COURT: The only difficulty, you see, is that under the present law we are not permitted to commence a criminal trial without the defendant being present, and that's something that ought to change, because willful non-attendance at trial should not be any different than willful absenting oneself from the trial after it has been started. The difficulty, of course, is that no doubt the courts feel that that would very soon be made an excuse for dispensing of the presence of the defendant. I don't think it would be, because I don't think the occasions of willful non-attendance are frequent.

MR. CADEN: Do I understand the Court then, if Mr. Sutter does not speak with the defendant prior to ten o'clock tomorrow morning or that if the defendant

does not agree to be present in Mr. Sutter's office by four o'clock tomorrow afternoon, that a bench warrant will execute as of ten o'clock tomorrow morning?

THE COURT: Yes, sir.

MR. CADEN: And I will advise the Court as to the progress of the case, as to the progress of the case at ten o'clock tomorrow.

THE COURT: Yes.

MR. SUTTER: That's my understanding.

THE COURT: If there's any place along the line to use a phrase from the banking word, you deem yourself insecure, and then you should advise Mr. Sutter you are asking the marshals to execute the warrant, and do so.

MR. CADEN: I will advise the Court as to my conversations with Mr. Sutter, should he not be here.

THE COURT: You know my phone number. If not, it's found readily in the phone book.

MR. CADEN: That deals with the matter of the last remaining case, the Fears (phonetic) case. That case has been set for September 13th.

THE COURT: A week from?

MR. CADEN: From Monday.

MR. SUTTER: From Monday, your Honor.

MR. CADEN: Based upon my involvement with this case, and putting that case immediately back, I will not be ready. I have discussed this with Mr. Sutter, because these cases I find I am not capable of starting that immediately after this one, because I have to constantly revise my schedule with some of the witnesses. Some are not in the state; some have cancelled their vacations. Fears will be in the courtroom on September 13th, Mr. Sutter advised me, with the understanding of setting a possible date within the six-month rule, and possibly with a waiver at that point.

THE COURT: You should be able to do that.

MR. SUTTER: There will be a problem in my part, Judge. I also would not be able to go to trial on the 13th, not for the same reasons. I am scheduled to commence trial, to commence a trial with Judge Pratt on the 8th.

THE COURT: In Brooklyn?

MR. SUTTER: Yes, sir. It's the last of the Watergate cases.

MR. CADEN: Your Honor, so I will advise you then of the status of our case tomorrow morning at ten o'clock as to where Mr. Graber is.

THE COURT: Keep in touch with us, because we

have to know.

MR. CADEN: I know, and thank you for your indulgence.

(Whereupon, the proceedings were concluded.)

ORDER FOR EXAMINATION OF DEFENDANT
DATED SEPTEMBER 3, 1976

TRP:BLC:dj
F.#761,312

M FILMED

FILED
IN CLERK OFFICE
U S DISTRICT COURT E.D. N.Y.
SEP 3 1976
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

-against-

RAYMOND GRABER,

Defendant.

- - - - - - - - - - - - - - - - - - - X

ORDER

76 CR 166

After hearing, and order made in open court on September 2, 1976

It is hereby

ORDERED that Dr. Francis E. Conrad, is appointed by this Court to examine the defendant RAYMOND GRABER at the Veterans Administration Hospital, Middleville Road, Northport, New York, on September 3, 1976 ~~at 1:30 P.M.,~~ with the afternoon and that Dr. Conrad report to the Court the results of such examination forthwith.

Dated: Brooklyn, New York
September 3, 1976

UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

BEST COPY AVAILABLE

TRP:JLC:dj
F. #761,312

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
SEP 3 1976
TIME A.M.
P.M.

UNITED STATES OF AMERICA

v.

RAYMOND GRABER,

Defendant.

No. 76 CR 166

To[1] UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF NEW YORK; AND/OR ANY OF HIS DEPUTIES, AND/OR TO ANY UNITED STATES MARSHAL;

You are hereby commanded to arrest RAYMOND GRABER and bring him forthwith before the United States District Court for the Eastern District of New York in the city of Brooklyn, NY ~~xxxxxxxxxx~~ ~~xxxxxx~~ with

Defendant failed to appear before Judge Dooling for trial on August 31, 1976.

in violation of

Dated at Brooklyn, New York

on September 1, 1976

Bail fixed at $

LEWIS ORGEL, *Clerk.*

By _____, *Deputy Clerk.*

RETURN

EASTERN District of NEW YORK ss

Received the within warrant the 1 day of SEPTEMBER 1976 and executed same.

BY ARRESTING RAYMOND GRABER ON 9/1/76 AND BRINGING HIM BEFORE JUDGE DOOLING

By ROBERT C. LESEMAN
F. DEWEY

[1] Insert designation of officer to whom the warrant is issued, e. g., "any United States Marshal or any other authorized officer"; or "United States Marshal for District of "; or "any United States Marshal"; or "any Special Agent of the Federal Bureau of Investigation"; or "any United States Marshal or any Special Agent of the Federal Bureau of Investigation"; or "any agent of the Alcohol Tax Unit."

TRANSCRIPT OF SEPTEMBER 1, 1976 PROCEEDINGS
(pp. 37a-70a)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

-against-

76 CR 466

RAYMOND GRABER,

Defendant.

----------x

United States Courthouse
Brooklyn, New York

September 1, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE JOHN F. DOOLING, JR., U.S.D.J.

STEVEN A. TESSLER
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JOHN CADEN, ESQ.
Assistant U.S. Attorney

JOHN SUTTER, ESQ.
Attorney for Defendant (Not present)

MR. CADEN: Your Honor, I make an application to issue the bench warrant for the arrest of Mr. Graber based on the following:

Mr. Sutter and I agreed that he would contact me sometime yesterday or late yesterday evening, or early this morning, once he had some information with respect to the whereabouts of his client. The first time Mr. Sutter and I spoke about this case was about ten minutes to ten this morning. I called Mr. Sutter and asked if he knew anything about Mr. Graber's whereabouts. He indicated to me he had been unsuccessful in --

THE COURT: Mr. Sutter was not able to call you last night?

MR. CADEN: That is correct. He indicated he did not call me and basically he had no information at that time.

Later on, he indicated that he had made an effort personally through his secretary to contact the Sheraton Hotel in Ithaca, New York, where he believed Mr. Graber had been staying, and was advised Mr. Graber had checked out.

He also indicated he had spoken to Mr. Frazer, who is one of his associates, and believed that Mr. Frazer had spoken to Mr. Graber and also believed

that Mr. Graber was thought to be on his way home, but wasn't absolutely certain about that.

I infcrmed Mr. Sutter that one of the witnesses who is here in the courthouse yesterday, and works in the Department of Conservation and Waterways had reason to believe through conversations with other employees that Mr. Graber was on his way out of New York on vacation.

So, Mr. Sutter and I quite frankly came to no conclusion as to where Mr. Graber is this morning and whether he is on his way back, or on his way somewhere else.

I feel quite insecure not knowing exactly where Mr. Graber is. I told Mr. Sutter I would make this application.

THE COURT: I take it that no one has communicated with Mr. Graber since yesterday?

MR. CADEN: Unless Mr. Frazer, who Mr. Sutter was somewhat hesitant to concern, did in fact speak, I asked him for the details and quite frankly he said he thought Mr. Frazer had spoken to him late in the evening, and from his brief conversation with Mr. Frazer he thought the defendant was on his way back, but Mr. Sutter was quite vague and I didn't press him, quite frankly, because Frazer wasn't there and

Frazer is apparently in another Court and I was led to believe that Mr. Frazer or Mr. Sutter would call me to confirm that his client is on the way back.

I find from the agreement that we had yesterday had either one spoken to him and had this conversation and that where Mr. Graber indicated he was on his way back he would have called me. So Mr. Sutter also indicated to me he had no reason to believe with any real certainty he would see Mr. Graber today.

He made an effort personally to call and find out where his client is.

THE COURT: The only stone left unturned is no one from the United States Attorney's Office has spoken directly with Mr. Frazer.

MR. CADEN: Correct, and I made an effort to do that this morning, and Mr. Frazer was unavailable to me. He was unavailable to Mr. Sutter and unavailable to me, he is in another Court. He left it to me, as I understand it, if either one of them had information Mr. Graber was on his way back, they would personally communicate that to me.

I have the additional problem, I would like to be able to move to Westbury, I would like to set up an office out there, I would like to advise witnesses as to when they could come in and feeling uncertain as

to what could happen I feel I have no other choice but to ask that the bench warrant be executed, and to advise the Court as soon as I can that we have located Mr. Graber and are ready to proceed with this trial.

THE COURT: All right, the bench warrants are to be executed forthwith, and would you please advise Mr. Sutter, and if you can reach Mr. Frazer, that the warrants are going to be executed, if the marshall can locate them.

MR. CADEN: They were advised in my conversation they thought that was a reasonable thing to do on my part, and that they know that now there is a bench warrant out for Mr. Graber. I would like to tell the Court that my schedule would be to remain in the courthouse until the close of business today, and if in fact we located Mr. Graber, if we locate him in the Eastern District, my thought is to see if the marshalls can lodge him in Nassau County with the understanding we will be in Westbury tomorrow morning.

If they don't locate him by the close of business I will remain here in Brooklyn until I hear any other word. So I'll be in conversation with Mr. Levin and I'll advise him by close of business today if Mr. Graber has been found, and if so, to bring him to the Eastern District in Nassau County with the

understanding we will meet in Nassau County tomorrow morning.

THE COURT: Very well.

(Whereupon at this time, the hearing was concluded.)

(Afternoon session, 5 P.M.)

THE COURT: I understand the defense Counsel --

MR. CADEN: Mr. Sutter. I spoke with Mr. Sutter this afternoon shortly after Mr. Graber's arrest and advised him he would be brought to the building and Mr. Sutter told me a lawyer from his office would come here shortly to make an application for the defendant's release.

I was momentarily late coming to the courtroom because I received a phone call from a Mr. Yannelli, a partner of Mr. Sutter's. He explained that he was trying to contact local Counsel in Brooklyn because there was no one at the firm capable of making the application on Mr. Graber's behalf.

He indicated, though, that he thought a lawyer should be here within the next half hour to forty minutes, and I just repeated to him what I told Mr. Sutter, that I would ask for an assurance that Mr. Graber would be at the trial tomorrow in Westbury, and Mr. Sutter and I agreed that Mrs. Graber, if she

were capable or able to find the deed to the home and come in with that deed and he assured me that that could be done.

I just talked to Mr. Yannelli, and he explained to me that Mrs. Graber is not feeling up to finding the deed for the house, so I am awaiting. Mr. Yannelli asked me to come back to his office and await his call within the next five minutes and he would give me the name of the lawyer and exactly when that lawyer would be here.

MR. GRABER: Am I allowed to talk?

THE COURT: You are, but don't talk about the case at all, about anything else you want to talk about.

MR. GRABER: In the first instance, I have not, for example, used the Long Island Railroad.

THE COURT: I'll tell you what we had arranged with Mr. Sutter, and that is we would not conduct the trial here, but that we would go out to Westbury and conduct it there.

Now, the courthouse at Westbury is at 900 Elson Avenue, it's in the Motor Vehicle Building.

MR. GRABER: Judge Dooling, I have inwardly been trying out and if Counsel was someone who was an attorney friend of mine, I had wished to call you up for many many weeks. I think I am what you call a

friend to the Court.

THE COURT: I am the judge, so you'd better be careful of me, Mr. Graber.

MR. GRABER: I would explain it this way. When this investigation was occurring --

THE COURT: It would be much wiser if you didn't talk about the case to me, because I made out --

MR. GRABER: I assume I am under arrest because of what these gentlemen told me, because I didn't show up at a trial yesterdary, would that be correct?

THE COURT: That and we couldn't have any assurance at all from any source that you would be available tomorrow, because what we did here yesterday was that Mr. Sutter gave a letter from Dr. Stefano which explained your medical situation in detail.

MR. GRABER: In good faith, my attorney told me it would not be necessary to be here yesterday, but to leave an itinerary. I received a telephone call at half after midnight last night, I left where I was and I was told that a trial would be held in Westbury, which was one of my requests, due to my disabilities, that it would be imperative, two things, a, to see Mr. Sutter at 4 P.M. today, which I said we could comply with without any difficulty. The other point was that it was mandatory that I call

Mr. Sutter at 10:30 this morning.

THE COURT: Before 10, it was supposed to be.

MR. GRABER: They told me 10:30. This I said might not be possible, and the reason is with my disability, first of all, Dr. Stefano said it would be good for you to get out of town for a few days. This was before, you know when I knew about the 31st, on the 30th.

THE COURT: Don't be upset about it, as long as we're all here now face to face, we'll get this straightened out.

MR. GRABER: I don't care if Mr. Sutter or anybody else knows it, sir, originally my indictment having had the experience of how much lawyers cost and having asked for help from your magistrate down here in a matter of hours he said it would be a hundred or two hundred, in a matter of hours it was eight hundred.

So, on the day of my indictment the Republican Party provided counsel, I had very grave misgivings, I thought that my best interest and the interest of the party might be diametrically opposite.

But there was no way to turn. Now, I was told that first week that certain things would happen. For example, when I was arraigned before you, you asked me, do I understand the nature of the charge,

had my attorney gone over it. I don't know if your memory can go back that far.

THE COURT: I know, because I always ask that.

MR. GRABER: Because we had not even discussed the nature of the charge to which I was either pleading guilty or not guilty.

However, I was told that within a week we would go over my grand jury minutes, that any actionthat was taken in my behalf, whether it was here or other places, I would get copies of the correspondence.

Four weeks started to stretch into months, and I was aware that we had a trial date of August 8th and so, at this point, never having, except that about a half dozen times in my pleading, or once or twice on making a telephone call, I may come back, I would be called to Mr. Sutter's office, but each time it was like a brainwashing, he's too busy, he can't see you.

And so we were now approaching the original trial date and I had never met with my attorney. I had many defense possibilities, witnesses, I was aware of certain people for the Prosecution and had information or things I wished to discuss with my attorney and he never would meet with me.

At this time, it was only three or four days

before our scheduled trial, never having met with my attorney, that I was first about to call you up.

I was scared, even to do that, because without the help of a party, certain people will not tell the truth. But, it was postponed for whatever reason Mr. Sutter --

THE COURT: I forget what the reason was, now.

MR. GRABER: I was also told it was only postponed, I assume you're Mr. Caden, only postponed because one of the prosecution witnesses had had a baby and wasn't "available" until August 26th. I was told now, forget about that, that isn't the reason, you don't know what is going on.

And so, these ensuing weeks went on and virtually I presume every member of my department has been interrogated by the United States Attorney, the Assistant United States Attorney.

I pleaded and pleaded with Mr. Sutter to start preparing a defense. I pleaded with him. We never met. We never discussed substance, we never discussed possible witnesses. This date of August 30th, which incidentally I was even told in the office by some of the state's witnesses, was being postponed for several days.

In other words, that there would be nothing

August 30th through 31st, that it would be on the top of my head, the date would have been a date early next week and that some of the Prosecution witnesses and so on, the 29th of this month I appealed to my political leader. Oh, yes, I forget to tell you.

I was told by Mr. Sutter ten to fourteen days ago, before he went on his vacation, that there would be no trial. My memory, under this thing, no trial the 30th or the 31st, and since Dr. Stefano said I am totally debilitated, and a change of scenery would do me good. Mr Sutter said to me, by all means go. Go with your family and see your son off to Cornell.

While Mr. Sutter was on vacation without saying it directly, he has a young man that works for him. I had discussed some of the disabilities I have, and this terror, for example, when I was a witness in Brooklyn a year ago July, I hired a limousine, not that I can afford those things, who took a devious route so I wouldn't have to use the Brooklyn-Queens Expressway.

Okay, they knew by me writing letters, begging Mr. Sutter, start preparing for a trial, and also this point, that I wished to have been in Westbury so I can help to defend myself. Approximately six or seven days ago, when Mr. Sutter, as I was told, I can only

accept, he was on vacation. I would not know if it's a fact.

A young Mr. Frazer said you must get your letter from the doctor today. By this time, my teeth had become infected. In fact, I was worried about my medication as I was apprehended in front of my own home.

Now, without ever having talked to my lawyer, he has a letter. I believe you have seen the letter.

THE COURT: The Dr. Stefano letter, yes, I have it here.

MR. GRABER: I guess you can understand my concern about the contents and how they might be used. I don't mean, used against me at a trial.

And so, I noticed that this young boy was taking over for Mr. Sutter. I don't believe he is a full-fledged lawyer. I said, you're not to use this in any way until Mr. Sutter explains how it's going to be used.

Now, I received a phone call at approximately 2 P.M. the day before. Let me think this out -- the day before yesterday, which would be the 29th.

THE COURT: Monday?

MR. GRABER: Today is what, sir?

THE COURT: Today is Wednesday.

MR. GRABER: Monday I received a phone call at

2 P.M. to come to Mr. Frzer's office. Mind you, never having prepared a case, never having discussed the case, never having looked at the minutes, never having an opportunity to discuss certain witnesses, who, incidentally, are still on vacation, and who, I told Mr. Sutter and Mr. Frazer three weeks ago, because in the office we have a chart who is on vacation, don't worry about it, there is plenty of time.

So I get this call at 2 P.M., all the time, all these weeks I wished to call you up because many things have occurred that I cannot believe could occur in America. And I wanted to discuss with you the issues and perhaps get the ACLU,who completely, maybe are 180 degrees to the left of me.

THE COURT: I don't think that bothers them much.

MR. GRABER: For the first time in my life I have learned that whether you agree with someone's actions or not, or their cause or not, that under our system there should be justice and that everybody is entitled to a fair trial. I always have had this reservation of conflict of interest. I share that in the few brief moments I had with Mr. Sutter. Because just as Mr. Drucker had said that day, I was arraigned, he mentioned something in that regard.

Subsequently, something I saw in the newspapers

in regard to another trial made me realize there was a conflict of interest between my attorney representing me or not, and he assured me, no, that I would come first.

But, as I say, no preparation, no meetings, no discussions of the issues, no reading of the minutes. He mentioned I had many witnesses. I have got to alert them to be home for a trial. Don't worry, we'll get to it.

So, at 2 P.M. and the day before yesterday and the night before I laid on my livingroom floor, I was so exhausted, I am too exhausted to get the keys out, and you want to go to trial tomorrow.

I said, but Mr. Sutter, you had said for many weeks and you assured me and assured that it had been done all in the proper way that there be no trial. He claimed that he and Mr. Caden had some sort of agreement, but that you were anxious to go to trial. These are the way the words were put to me.

THE COURT: I certainly am.

MR. GRABER: So I said, we haven't even prepared a case. He said, I'll have you out of there in five minutes, vindicated, free.

Now, each one of us is different by nature. I have used this expression in this, of all things I

have gone through, that has so completely broken up -- My own physician said to Mr. James Frazer, Mr. Sutter's assistant, in my analysis what has killed my client is the fact that you haven't even met with him and seen him, and each time he kept up to have the girl have to sit three or four hours, he'll see you another time.

We have not prepared a case, so I said, no, I must know more. My witnesses are out of town. I need some of them. And one of the witnesses is in fear in testifying for me unless something to protect her occurs. So, she said, okay, Ray, if that's the way -- As long as I have that letter, you can take of and have a few days rest and as long as I have that letter there is no objection on the part of Mr. Dooling, and I will cite right now, go in and take a lie detector test on anything I have said.

I have lived through hell trying to get Counsel to help me.

THE COURT: As I say, we're trying to get hold of the lawyer to represent you here this afternoon. did you have any lunch?

MR. CADEN: Your Honor, I was listening. They indicated to me that the firm would contact a lawyer in the local area and he would be here shortly.

I see no reason to respond to what Mr. Graber

says, other than I just remind the Court that Mr. Sutter told us on Monday as an officer of the Court that he directed Mr. Graber to be here on Tuesday of this month, of this week.

MR. GRABER: That is not true. He took my itinerary, he knew where to get me, even 12:30 last night.

THE COURT: He knew where you were?

MR. CADEN: I am sending one of the secretaries down to my office to find out if they have called back.

MR. GRABER: Judge Dooling, all this time --

THE COURT: It's very difficult for us to deal with this situation without Mr. Sutter being here, because on the head of fairness which you have just mentioned, you see, Mr. Sutter will have to be here to answer what you have said. Because so far as Mr. Caden is concerned and so far as I have heard it from Mr. Sutter here in Court, the story is quite otherwise.

You can be quite sure had we thought there was any problem between lawyer and client, we would have long since looked into it. There isn't much we can do.

MR. GRABER: Not only my doctor, but Mr. -- I have been to my physician. We have talked and you heard what I said, my physician said I keep him posted

all these months, my physician, I pleaded since this is not my lawyer, but the party's lawyer, with Mr. Asou, who happens to be the leader of West Hempstead, help me, help me, help me to get this man to prepare a case.

He would go higher up and report back to me, by God, I gave them hell. And this went on and on and on. And there was only one reason, I was hoping that some lawyer along the line, there was a reason for all this that I couldn't comprehend , and at the proper time I would be notified.

Incidentally, I have also the letters that I wrote to Mr. Sutter begging him to see me, begging him to prepare a case, begging him to look into certain things. This isn't something that I just spontaneously said. All this is in writing. All of this is in writing.

THE COURT: You have me at a disadvantage, and I must ask you to bide your time a bit, but we have to deal with this situation. We can't deal with it in the absence of your lawyer or his representative. And whether we're likely to see him or not, I don't know.

MR. CADEN: I just checked with my secretary, and she has indicated we have received no calls up to several minutes ago, but we're going to check with the

switchboard to see if they have got any.

Judge Dooling, should I return to my office? I don't see any purpose, unless we have a lawyer here, to go any further.

THE COURT: I don't want you to be too unavailable.

(Whereupon the following occurred at 5:20 P.M.)

MR. GREENBERG: Your Honor, for the record may I just state my appearance?

THE COURT: Yes, sir.

MR. GREENBERG: It's Harvey L. Greenberg, 16 Court Street, and I have been requested by the office of Mr. Sutter by phone call this afternoon, about a half hour ago. If I would be able to assist his office and the defendant here by appearing.

Your Honor, just to set the record straight, I received a phone call from the office of Mr. Sutter a half hour ago with reference to Mr. Graber.

I then called your law secretary and advised him, I tried to reach the Assistant U.S. Attorney but I guess he was here in court.

THE COURT: He was in court.

MR. GREENBERG: I assumed so. That is why I called your office. My understanding is that the matter is scheduled for trial tomorrow in Westbury. I

spoke directly, first I spoke to an associate attorney of Mr. Sutter's and said I did not want to represent to the Court anything from an associate, that I wanted to speak to Mr. Sutter directly. So whatever I told the Court in this matter would be from him directly.

I then spoke to Mr. Sutter and he advised me that pursuant to the notice that he received, or the agreed date, or whatever it was, sir, and I am not sure what it was, that he would be ready and present at 9:30 tomorrow morning at Westbury in this matter.

With that in hand, I came over here.

Your Honor was kind enough to allow me to speak to Mr. Graber and Mr. Graber has a series of grievances, which I think he has related to the Court and to me within the time limit I felt it would be fair to keep everybody waiting around.

One of the major grievances seems to be lack of communication between himself and his Counsel, and since I am in no position of privy to Mr. Sutter or to Mr. Graber, I did no want to go into too much depth in that situation. I stated to Mr. Graber that first I told him what Mr. Sutter had told me and I stated to Mr. Graber that if there are any other problems, I think it would be something between his Counsel, himself and the Court to be spread upon the record in

first person when Mr. Sutter was present.

I understand that Mr. Graber was in Mr. Sutter's office on Monday of this week, and they had done a review of something. I don't know what, but of some relationship to the case before the Bar.

At that time, I think Mr. Graber told me there was a medical certificate that was left with Mr. Sutter that was to be presented to the Court in lieu of Mr. Graber's appearance. I understand that though Mr. Graber may have believed this to be the fact, that in fact it was not.

THE COURT: We have it here.

MR. GREENBERG: It's not the understanding reached with the Assistant U.S. Attorney and the Court. I'm only saying that.

MR. CADEN: I don't understand what you're saying, Mr. Greenberg.

MR. GREENBERG: Was Mr. Graber supposed to be in Court today, or yesterday, or whenever that he did not; I understand that he is now in the custody of the Marshalls, so that there must be something that he did that he was not supposed to do. Otherwise, I can't envision if the case is on for trial tomorrow and everybody were to be --

THE COURT: There was no assurance of his

appearance and the arrangement that had been made for his communicating through Mr. Sutter to Mr. Caden and to the Court his availability and the certainty that he would be available for the trial on Thursday without forthcoming. Mr. Graber could not be reached. The United States Attorney was informed, either through Mr. Frazer or Mr. Sutter, not by Mr. Caden.

MR. GREENBERG: May I just ask the Court, and I hope the Court will bear with me, of the ignorance of a lot of the facts, how did Mr. Graber get to be in the custody of the Marshalls, did they go somewhere and pick him up?

THE COURT: They did, indeed.

MR. GREENBERG: That fact I was not aware of.

THE COURT: To assure his presence in court tomorrow.

MR. GREENBERG: Now your Honor, I understand after talking with Mr. Graber that it appears to be the least of Mr. Graber's problems is his appearance in court.

I think he has got much more crucial problems with his case and with his own life, but in my surrogate capacity here, I can't go into any depth. The only thing I can assure the Court is that Mr. Graber's not being in the Easter District from

MOnday night until today, Wednesday, was not by design or to avoid the processes of the Court.

There seems to be somewhere along the way --

THE COURT: There was then, that was not the impression produced here in court when Mr. Sutter was here on Tuesday. The impression produced by Mr. Sutter to me, unless posed to Mr. Caden, here, was that Mr. Graber had calculatedly absented himself from the District and from this Court.

MR. GREENBERG: I have no answer to that, I don't know, I wasn't here.

Your Honor, all I can say to you is that I think that there has been an extremely large and unfortunate misunderstanding here. I don't think there is any intent to flee or intent to --

THE COURT: That is not obviously, we wouldn't have asked the marshalls to take him into custody to assure his presence in court tomorrow unless we had been given the unmistakable impression that unless that was done he would not appear for trial. That is the only reason it was done now. That is all I'm interested in.

Now, Mr. Graber has other problems with his Counsel. If he has come to a parting of the ways with his Counsel, and that is understandable, we'll have to

deal with it when it comes up. But I must insist that Mr. Graber be in the courthouse tomorrow in Westbury at 10 A.M. At that time the trial is to start, unless there is very sufficient reason for it not to start, for Mr. Sutter has assured me, and Mr. Caden, that the case is ready for trial, and I understand that representation has been repeated today.

MR. GREENBERG: Yes. It was repeated to me, also, sir.

THE COURT: Mr. Graber entertains a different view of the matter from what he says here. But, insofar as I am concerned, and I guess Government's Counsel is concerned, the case is ready for trial. You should know, while time is precious, we can't afford to lose it.

MR. GREENBERG: I understand that, your Honor, I have worked in front of your Honor and under the problems of the Eastern District. My problem now is to assure the Court that without being in the custody of the marshalls that Mr. Graber will be in Westbury at 9:30 tomorrow.

I would respectfully ask the Court if the Court has any doubt, or anything else, due to my lack of familiarity with the situation, that Mr. Graber himself be allowed to address the Court on that question, because

I clearly cannot, in the short period of time that I have been involved here, make any representation in good conscience to the Court.

THE COURT: Mr. Graber?

MR. GRABER: First, my heart was turned out a little more. I was reachable at 12:30 this morning at great sacrifice I followed every direction my attorney gave me explicitly. Obviously he knew where to reach me. He knew where I was, and why, there must have been a telephone call record at the Sheraton Hotel, although it was a great difficulty due to the medical aspects of this case. I did by supreme -- I'll call it sacrifice, for the moment -- at the exact moment I was asked to call Mr..Sutter's office at 10:30 this morning, I made the call collect from the Roscoe Diner, from Roscoe, New York, and Mr. Sutter wasn't there. It was just like each time I had an appointment to go over the case, he wasn't there or something else came up.

We got home in time to follow the other direction, I have to be at his office at 4 P.M. this afternoon, but of course that was obviated.

Obviously, Mr. Sutter and he did tell me Monday, it was the first day I was assured, many weeks ago, that there would be no trial on the 30th or the 31st of

August. I followed my doctor's advice to get away for a few days, that would be the best thing for me.

I learned of it Monday at 4 P.M., but he assured me that if he had the letter, I could go, and he said , give me regards to Cayuga's waters. I would never under any circumstances defraud this flag or this Court, if I am directed to be in Westbury at 9 A.M. tomorrow morning, of course I'm going to be at Westbury at 9 A.M. tomorrow morning.

THE COURT: I didn't say 9 A.M., I said 10 A.M. at that court.

MR. GRABER: I assure you of this, I would like at that time with Counsel present to go over it because from everything I see he hasn't even been interested in my defense witnesses, or whether they're present in town. He hasn't asked me for a name of one, he hasn't discussed this case with me at all. He hasn't even asked me for the minutes for the first time and I believe there is some errors.

In fact, may I ask your Honor this, it may be critical to the case.

MR. GREENBERG: Just direct yourself to the question, whether you'll be in court tomorrow morning at 10.

MR. GRABER: Do I have the right at that time

to make other appeals, if I feel I am not getting a fair trial?

THE COURT: I think we have to proceed and do what is in the interest of justice. Tomorrow morning at 10 o'clock.

MR. GRABER: I would certainly be there.

THE COURT: Does that satisfy you, Mr. Caden?

MR. CADEN: It doesn't completely, your Honor, it doesn't satisfy me to this extent.

I don't think the defendant should be released on his own recognizance, he has been released on his own recognizance once before.

Secondly, that Mr. Sutter in the strongest word I have ever heard an attorney use since I have been with the Assistant Attorney's Office, informed me that he had informed the defendant of this trial and when the defendant said he was either unwilling or unable to attend, his words were he ordered him to be in the courtroom the following day. On that representation, as I understand it, Mr. Graber left Mr. Sutter's office and he went to Cornell.

Secondly, I might add I heard that from others, I have heard from others who were in this courthouse that Mr. Graber intended to go north, and that he did not intend to come to the trial and lastly, and most

importantly, when the United States marshalls tried to go out and to at least explain to Mr. Graber that he would come to the courthouse, his initial reaction was to run.

MR. GRABER: I didn't run, I fell on the ground. I fell in the street. I said, come into my house, didn't I?

MR. CADEN: There are marshalls here that have somewhat of a different story to relate. The point is that as far as I am concerned, Mr. Graber, I am asking this Court to assure Mr. Graber's appearance by a $10,000 surety bond and I think it is fair under the circumstances, because this man is accused of perjury. His lawyer, who is a member in good standing of this profession, ordered this defendant to come to the trial and this defendant didn't come.

The theatrics this defendant displays reinforces my conclusion as to where the truth lies, and I refuse to be moved by an appeal to emotion. Mr. Graber knew this trial was coming for a long time, he knows many things about this trial, as he's explained to the Court, but my particular interviews of witnesses during this case, I ask that the defendant be held on a $10,000 surety bond.

MR. GREENBERG: May I just be heard on this,

your Honor?

It seems, and just from the gist of this conversation, that I am getting, that Mr. Graber has a home in Ithaca. It isn't that he intended to absent himself without any known address or there was any difficulty in finding him, that he was hiding from the jurisdiction. Secondly, we're talking about tomorrow, your Honor, and we're talking about problems that seem to be very serious between client and Counsel.

THE COURT: You see, the difference with that, Mr. Greenberg, is that Mr. Sutter isn't here.

MR. GREENBERG: I understand that, your Honor. May I make a suggestion, with all due respect to the Court.

Just so no grave injustice may not befall a defendant who is obviously distraught, notwithstanding whatever Mr. Caden says, may I suggest, your Honor, that the issue of whether a surety bond or recognizance bond, or any other action taken on the release on his own recognizance now be deferred until tomorrow in Westbury, wherein Mr. Sutter will be there. Mr. Grber has assured the Court he will be there. I think at this hour, your Honor, the issuance of an order designed for surety bond is tantamount

to incarceration for this defendant for tonight.

THE COURT: I think my own experience has been that you can obtain a surety bond any time, day or night.

MR. GREENBERG: I understand, sir, except his lawyer is in Nassau County. I am, I don't know, fortunate or unfortunate, the one person to be working in the last week in August, on a holiday week, I am ill-equipped to go into a situation with a surety.

I think justice will lose nothing if this matter would be deferred for the fourteen or fifteen hours wherein this defendant would reside in that county. I think I am not even sure of that.

MR. GRABER: Yes, I do.

MR. GREENBERG: Who resides in that county to appear and that all the applications to your Honor can be made in the presence of his Counsel.

THE COURT: I would feel sympathy for that view except there was the beginning of an arrangement in which a deed to Mr. Graber's house would have been brought in as security, and for some reason that was not done.

MR. CADEN: Correct, your Honor.

MR. GREENBERG: Your Honor, I am at a loss

because -- Was it to be brought in here then; when, today?

MR. CADEN: I had spoken to Mr. Sutter immediately after the defendant's arrest, and he asked me if I were agreeable to his release and I said I was and that I would be more than happy if the defendant, his wife, or a member of the firm would be kind enough to bring the deed in. He assured me, Mr. Sutter personally assured me that could be done.

Later I was advised that Mrs. Graber was unable, would be the best word to describe it, because of her condition, in any way, to help or employ the firm in getting that documentation. And I become very circumspect about why that wasn't being done, because it seemed like such a reasonable request.

MR. GRABER: Not on my part, this is the first I've heard of it.

MR. GREENBERG: I think that these issues may be better resolved under the circumstances that might arise tomorrow. I can't really envision a change of the status of this defendant between a quarter to six now and ten o'clock tomorrow. I think that if the Court would show some faith in the defendant, I hope

that he will be there, that this and the other serious issued of the case can be presented where you would have true benefit of Counsel and not a stand-in such as myself.

I don't think anybody really believes that Mr. Graber is fleeing the jurisdiction to avoid the processes of the Court.

THE COURT: No, but I do. You see, the risk isn't that he is attempting to flee the jurisdiction, but he is, as the Government sees it, and in the absence of Mr. Sutter we have difficulty in finding any way out of this. The Government is satisifed that he is trying to defeat the commencement of the trial.

MR. GREENBERG: May I say this, your Honor.

THE COURT: Just a minute.

MR. GREENBERG: I'm sorry.

THE COURT: And one of the last things that happens in your experience, because I know you have the experience in a criminal bar. When you can't think of any other means of deferring a trial, you change lawyers.

Now, you see it all falls into too much of a familiar pattern. I hope it isn't so. I sincerely hope it isn't so, because it would seem to me this is

a case in which there could well be a meritorious defense, a number of serious problems, and I do think when we have the assurance of Counsel that the case is ready for trial and the Government is ready for trial, that everything seems to fall into its own patterns.

What I will do is this. I think it would be very difficult to get the surety in time to get the man released in time so he could make a decent appearance in court tomorrow morning. However, he must execute and he will be released pursuant to Section 3146 (a) (3) upon his execution of a personal appearance bond in the amount of $10,000.

Now, have you any cash with you?

MR. GRABER: A few dollars, perhaps a hundred.

THE COURT: Now, that the point we'll fix without deposit of cash, my point in doing that, if you are not in court tomorrow morning at 10 o'clock, you will have committed a felony for which you can go to jail for five years. And the proof will take about five minutes. Is that clear?

MR. GRABER: Of course it is, your Honor.

MR. CADEN: I have nothing further.

MR. GREENBERG: Thank you very much, your Honor.

THE COURT: Tomorrow morning at 10 o'clock.

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TRANSCRIPT OF SEPTEMBER 2, 1976 PROCEEDINGS
(pp. 71a-114a)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

-against- :

RAYMOND GRABER, :

Defendant. :

----------x

76-CR-166

United States Courthouse
Brooklyn, New York

September 2, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE JOHN F. DOOLING, JR., U.S.D.J.

I hereby certify that the foregoing is a true and correct transcript of the stenographic notes taken in the above-entitled matter.

Official Court Reporter
U. S. District Court

MAURICE DAVIS
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JOHN CADEN, ESQ.
Assistant U.S. Attorney

JOHN SUTTLR, ESQ.
Attorney for Defendant

MR. CADEN: The Government is ready to proceed.

THE COURT: Are you ready to proceed, Mr. Sutter?

MR. SUTTER: If your Honor please, the defense counsel is ready to proceed. I don't know if there exists a satisfactory attorney-client relationship. I had an opportunity this morning to read today's Newsday, to read the daily publication out here called Newsday, and it would appear that Mr. Graber is dissatisfied about my representation. I would ask that the Court at this time call upon Mr. Graber to determine whether or not he is prepared to continue.

I am prepared to continue, your Honor.

You and I did concur that this is primarily a question of law, rather than one of fact, and that's why we have waived the jury trial or are prepared to do so at this point because Mr. Graber seems to be dissatisfied, according to what I read in the papers.

THE COURT: Perhaps I think we should take a few minutes' adjournment and speak to Mr. Graber himself.

MR. GRABER: That wouldn't be correct.

THE COURT: Would you come up to this lectern so I can hear you better, Mr. Graber?

MR. GRABER: Judge Dooling, it wouldn't be

totally correct that I would not speak to Mr. Sutter in what you would call a conference for a few moments.

However, I do have an additional request in view of yesterday. I would like for a moment for your Honor to join us in conference. I do want to show you four documents that show you I told the truth yesterday.

Would you join us?

THE COURT: I can't do that very well because I can't have any ex parte communications. If this is a matter relating to the attorney-client relation, it should be developed in Mr. Sutter's presence.

MR. GRABER: I meant with Mr. Sutter's presence.

MR. SUTTER: I would ask also that Mr. Caden be present at that time.

THE COURT: I think it should be done in open court where we can proceed sensibly.

MR. GRABER: I have no objection on that first issue that I mention that in open court but I do request the privilege of a conference with Mr. Sutter in a room.

THE COURT: Certainly. Why don't you use the jury room, if you will, Mr. Sutter?

MR. GRABER: May I, to clarify, that it be voiced -- may I mention that now, in open court?

THE COURT: Certainly.

MR. GRABER: Your Honor stated yesterday and he has many years of experience, that in some cases a defendant will, at the last moment, you know, don't feel comfortable with my counsel. I want new counsel and --

THE COURT: I said it because it's so and I meant it.

MR. GRABER: That's what I meant and I had in certain statements which incidentally last night an attorney, whose brother is also an attorney, and who I have been confident with, he called his brother up in Maine, who is on vacation, and this attorney confirms that for months I begged to have meetings with my counsel to discuss substance, fact and preparation because this is a very, very complex case. Word against word, and I think more important than one person's word against word, is proof in writing.

This involves many documents. Some of these documents are in storage cases.

When I was first indicted and met Mr. Sutter, he said he will be asking for some records to be retrieved and that we would discuss that quite soon, at that time. I don't dare move on some of this in my department because I am not the top executive officer

and do not wish to be accused of insubordination.

What we have here is four letters. In addition to these four letters, there were many telephone calls and many persons, including attorneys, who went on my behalf to get together with my counsel to discuss substance.

The first letter is dated May 24, 1976, when after several months of not being able to get together with my attorney on substance, I became concerned because of some rumors, and wrote:

"Dear John:

"I believe that the old expression that it is better to light one candle than to curse the darkness. I'm sure completely in the dark regarding the status of my federal problem, at this point. I have heard some conflicting reports by letters. That's all. At the least I would be grateful to learn whether or not my original early August trial date still stands and in the event it does, what timetable might I expect regarding the establishment of communication with you for the purpose of preparation? Any enlightening advice would be appreciated."

There was no response to that letter. In the ensuing period, into early June, there were other

telephone calls made through the intercession of others. There were appointments set up and I sat and cooled my heels in the outer office, either not meeting with my attorney or having one of his subordinates come out and explain that this came out or that came up and he had no time, and we had plenty of time.

On June 9, I wrote another letter to my attorney and in that, I reminded him of some things that he said the day we got back from Brooklyn, the day I got arraigned, that we would get together in a week and review my federal grand jury minutes, (which, incidentally, are grossly inaccurate.) I did not see my grand jury minutes, although begging for them, until Monday evening of this week, at approximately 4:00 p.m.

"2. That you would be available to retrieve my debriefing report, summarizing the questions and answers involved in my federal grand jury appearance and would advise me where they have been kept, in a period after I submitted them, to Jim Caterson."

My attorney had told me the first week I met him, that he knew where these debriefing minutes are and they are terribly important to the case and I would be very surprised to learn where they were.

"Next, that you would provide me with copies of all correspondence that were transpired between you and the United States Attorney and/or the Nassau District Attorney in matters relating to my case, would keep me posted as events unfolded."

No answer to my letter of June 9.

I also, not to waste the Court's time, wrote again on July 16, 1976.

I will simply state, "My rotten luck. Once again we did not meet."

THE COURT: What date is that?

MR. GRABER: July 16.

On August 27 and the substance in the letter relating to the case, therefore, I do not wish to reveal in open court, at this time, without advice of counsel, any of the paragraphs of it, but in essence, I did say this: -- this paragraph I can read.

"John, please do not miscalculate. I will not go on to trial on short notice."

By that I meant it was flip-flopping back and forth. Some of the people in my department had told me that the Assistant United States Attorney was mentioning one date that would be a postponement into the latter part of this week. On the other hand, my

attorney, and I turned to him, "John," I said, "are you sure, because I know of no motions."

At that point, I almost called the Court but I was in great mental conflict because I learned how costly it is, getting into a complex case like this, proper representation.

I also said, "I want to know of your strategy in advance."

I particularly wanted to know this because we had an entirely new ballgame, that the prosecution has prepared its case beautifully. It has virtually, I could not name an exact number, interviewed and re-interviewed and gone into great depth with virtually every person in my department, or who had been in my department in past years. Some of the stories that came back to me were amazing.

I knew that there was evidence in the record that would refute some of these things. I knew the motives of certain people, like the day I was indicted, the man who jumped with joy and said, "Now, I finally get his job."

Therefore, knowing that the prosecution was prepared in great depth, I wished to sit down because I understood in a federal case, I'm not a lawyer. I

hope I am using the right words, that there is full disclosure in advance and having full disclosure, with so many people involved, and so many conflicting statements, I wished to have the time to have all the documents and facts outlined so when my attorney questioned these people, if their motives were not just the motives of justice, he would have the answers in mind and know how to interrogate them.

In fact, in one case, we need the help of another man, not connected with the town government, who had promised me a document that would refute this potential witness and has never delivered the document to me.

I wish to have my attorneys help me to get that document.

I also, since there is so -- God bless him, one called me last night, one probably -- one of the most kind occurred last weekend, "You have been made the scapeg at."

As late as last night, I was called by an employee who told me he was being pressed very hard, although he had nothing to contribute to this case. He had great fear and that he had called Mr. Sutter's office knowing that Mr. Sutter was my attorney, for

some guidance and some help. In connection with that, he told me a story, he knew wasn't a fact, and I said, "My God." In this case I remember the whole thing and its sequence so clearly but it means going up into the attic and searching through old correspondence, to the Personnel Department, etc. All of this takes time. Each time I asked about my witnesses and some of them wished to testify for me, but they are in great fear for many reasons. They fear they might lose their jobs if they testify for me. They simply wanted assurances from Mr. Sutter that they would be protected.

He, up to last Monday night, he didn't seem too concerned about my defense witnesses who, in great measure, due to this Labor Day weekend and week after are on leave from our office.

Additionally, there is one thing about me: I am an extremely precise person. As my attorney asked me the first day we met, Do you have any German blood in you? Germans, I presume, are very methodical.

I have kept every appointment. I respect the flag that I see over here in the right. Without this communication or knowing what I was getting into and knowing the complexities of this case, and the cross-currents, I did not, after living what I believe to be

an honorable life, raising four wonderful children who are as straight as an arrow, which I think shows that I have brought them up to respect the law, and so suddenly at 4:00 p.m., Monday, without any communication, without any preparation, without going over whatever full disclosure items, who the witnesses were against me, I was asked the following:

"Guess who they are and write some notes. Look at your grand jury notes and this will keep you busy while you are up at Cornell University."

Yes, Mr. Sutter believed that he had a concept, and apparently, in his mind, he feels this concept was enough, without the thoroughness of documents, or having a profile on the witnesses in advance, and I didn't feel comfortable with that way. I realize the ramifications, should I be declared guilty. I wanted to and wish to go to trial thoroughly prepared.

We have an entirely new ballgame. The case, I would presume, the Assistant United States Attorney is going to present, is in great part based upon witnesses who are not involved in the grand jury appearance or among those on which the grand jury made their determinations, and my indictment of alleged perjury. The prosecution has done a thorough job. In fact, last

week, one of the men who has nothing to contribute and has been with us a long time, came back and reported to me, "They acted like animals in interrogating me."

How can one man alone, without preparation, fight back all this might and power and in what has been going on these past three weeks by the prosecution, and going to court unprepared?

In any event, your Honor, I did want you to know what these four letters, one each month, that when I was confused yesterday, I didn't know, since my attorney has my itinerary -- my wife knows that it was -- the itinerary at his direction was given to his secretary. I was told so long as I delivered a medical letter and gave my attorney the permission to give to the Judge, and all I ask for, so that the letter could not be misconstrued, that it be a confidentiality between the Judge and my attorney, at this time.

As you know, that letter recommends that I am completely debilitated. I was assured that having that letter in hand, I could go to Cornell University, so long as I left my itinerary and would return yesterday, that I found exactly what I said I would.

At 12:30 the evening before last, that's 12:30 A.M., to have a very rocky evening -- at one

point I was almost ready to tell my wife to take me down to what I believe is the Sibley Clinic (phonetic), to Cornell University. I am on antibiotics. They have a reaction which is attendant to antibiotics.

We have been forestalling the pulling of certain teeth that are infected, and I am in pain, waiting for me to get enough strength to withstand the rigor of the operation.

My doctor had said to me, when I had mentioned Cornell University, could I medically make a trip, and the demands of the trip, he said, "The best thing for your health would be to get away for a couple of days."

Very frankly, when I did get up to Cornell University, although these dilemmas were on my mind, I did see that my doctor was correct and a week in the mountain air would have done me a world of good.

Now, I wish to be with my counsel, your Honor, if I may.

THE COURT: Yes, Mr. Sutter?

MR. SUTTER: If your Honor please, you can obviously see that there is a difficulty between attorney and client in this particular matter. I have received from Mr. Graber accusations concerning the

United States Attorney. I have my own opinion as to the believability of those things, concerning Mr. Caden and my relationship with Mr. Caden has been most honorable, at least in my opinion. I don't know what his is.

I find it difficult to believe that the Certified Shorthand Reporter employed by the United States Government would deliberately falsify grand jury testimony. I find that rather difficult. Can there be errors? There can be errors in anything. Can there be omissions? Yes. Falsification, I find hard to believe.

I find it difficult to believe that a gentleman of the stature of Mr. Caden would threaten witnesses, would employ all of those things that we would find abhorrent in the practice of criminal law.

I tell you this, your Honor, very candidly, our firm is set up in the manner wherein I appear in the court and we have a gentleman assigned as a preparation counsel.

(continued next page)

Mr. Frasier has met with Mr. Graber on innumerable occasions. Did I meet with Mr. Graber that many times? No. I believe I met with Mr. Graber three times. I am normally engaged in trials in other courts.

My obligation is to be here, as I was on Tuesday and as I am today.

I will say this: When I met with Mr. Graber on Monday I told him he had to be there and he told me pointblank, he would not.

MRS. GRABER: That is not so.

MR. SUTTER: You weren't there, ma'am. Please. I reported that to your Honor and I told your Honor where he was. I told the United States Attorney where he was. I think I verified the fact that there was registration at Cornell at that time because my daughter was being registered up there at that time.

Your Honor was gracious enough, and Mr. Caden was, to allow the trial to commence today. This is not a complex trial. It's not an issue of credibility. It's an issue of law that has been thoroughly prepared by my office.

We are ready to proceed. I don't want to get involved in any political infighting in a case of this

nature, as to who likes Mr. Graber or who doesn't like him. What the motives of the witnesses are, he was instructed just to give me a list. Tell me what their possible motives are. Whether I use them or not, it's a matter of defense counsel strategy and I can't go into that at this point.

All I can tell you is, Judge, we have done our job in this case. People have been available for Mr. Graber. I have not, I concede that, sir, but people who are responsible for the preparation have been available to Mr. Graber at any time that he sought them.

I want to say, very frankly, I abhor the accusations against Mr. Caden and the United States Attorney's staff. I have not found thoseto be verified in any manner whatsoever.

THE COURT: I think, obviously, the United States is prepared to go forward.

MR. SUTTER: I am as counsel. I don't know if my defendant is. That's my problem.

THE COURT: The indictment was found on March 5.

MR. SUTTER: Correct, sir.

THE COURT: The defendant knew about it, at

least, maybe some two weeks later; March 18, when he was placed under arrest and in connection with the indictment, an appearance was put in for him by you.

Now, I don't have the docket sheet with me and I don't know what the date of the arraignment was but in the period of time since then, and this was one of a group of cases, there has been ample time for the problem of disagreement between attorney and client to be brought to the Court's attention, to be surfaced, either by the defendant's election to terminate his counsel's representation or by counsel's application to the Court to be relieved of the responsibility of the defense.

Now, I think that it is enormously difficult, this is an adjourned trial date now. The adjournment to last Monday was an adjournment trial date. It is difficult now to understand the basis on which, at the last moment, the reluctance of the defendant to go to trial and is presented in such a dramatic way.

Now, I understood, partly by osmosis, that the defense in this case would not be aimed at a confrontation of witnesses in an effort to determine who was telling the truth about what particular episodes, but that it would essentially be, first, a

testing of the sufficiency of the Government's evidence to support a general allegation and, second, a battery of legal issues, which lay just below the surface in the case.

MR. SUTTER: That is quite correct, your Honor.

THE COURT: That it does not, in most cases, to be an irrational method of procedure, and if it was clearly presented to the client, so that he saw that he had the choice between accepting the recommendations and advice of his attorney, or choosing another attorney, that was a decision that he had to make, take responsibility and make it at an early date. It was made plain that at the time of the arraignment there is an important time schedule in this, as in every other criminal case.

The trial date was selected with reference to the date, when the case was considered initiated against the defendant, which I believe was March 5th.

MR. SUTTER: March 5th, in the indictment; March 17th is the arraignment.

THE COURT: But I think we included that. We had to treat the March 5th date as the critical date because that was the date of formal initiation of the proceeding and there was no question of the defendant's

unavailability or need for a warrant or sealed indictment or anything of that sort.

MR. SUTTER: Correct, sir.

THE COURT: Now, in those circumstances, the time within which, under the Speedy Trial Act of 1974, this case must be commenced, is roughly six months from that day, or really this week or next week, at the latest.

Now, these are the things which I cannot believe were unknown to the defendant, if he met with Mr. Frasier.

Is Mr. Frasier a member of the Bar or a para-legal --

MR. SUTTER: He is a registered law clerk in the Court of Appeals of the State of New York.

THE COURT: Is he a para-legal --

MR. SUTTER: No, he is in an admission program, without law school. He is one of the last --

THE COURT: He is a law student/clerk?

MR. SUTTER: One of the last vestiges.

THE COURT: I think the way the matter is now, I suggest that Mr. Graber has felt free to criticize your conduct as a lawyer in devastating terms, as well as the Government and its representatives. I

think, perhaps we had better take a short adjournment and talk, for you to reach a clarification with Mr. Graber.

Now, we had received your assurances at an earlier time, Mr. Sutter, and that in part explains the selection today of the trial date and to the convenience of the defendant and his ailments, this as the place of trial on the assumption that a view of the case being the one that I have outlined, as coming from the defense counsel, the case in which it was appropriate to waive a jury trial so as best to preserve the legal issues and that has been -- I can't say that with confidence, but that the defendant would concur in that recommendation.

MR. SUTTER: He did on Monday, your Honor.

THE COURT: That's another matter.

Now, I suggest that at this time you take an adjournment and in that time, Mr. Caden of course can consider, with his colleagues, whether or not he wishes either to make a statement or present evidence which would meet the charges which Mr. Graber has made against the conduct of the United States Attorney and his staff.

MR. SUTTER: I should like to afford Mr. Caden

an opportunity to do that.

THE COURT: We will have a short recess.

THE CLERK: All rise.

(Short recess)

THE COURT: Well, gentlemen, have you reached a resolution to anything?

MR. SUTTER: If your Honor please, I believe Mr. Caden would like to make a brief statement with reference to the accusations made.

MR. CADEN: I would just like to indicate to the Court that I don't really feel that Mr. Graber's comments deign a response on my part other than to assure the Court, in the years that I have practiced in the Eastern District, which have been for the past four years, to my knowledge, I have not done anything improper or unseemly, and I can assure the Court, in this particular case, my conduct can bear the closest scrutiny and I assure the Court, I have done nothing improper or unprofessional

That's all I would like to say.

THE COURT: What about today's trial?

MR. SUTTER: If your Honor please, we are attempting to communicate with Mr. Graber's physician, who has his offices at the Hilton Avenue Professional

Center in Garden City.

It is my understanding that he will be present at one o'clock. It's rather difficult for me to explain these things in open court but Mr. Graber and I now have an understanding between each other which did not exist previously, but I do feel that if the Court would be lenient enough to adjourn these proceedings until two o'clock this afternoon, to allow Mr. Graber to confer with his physician, that it would be in the best interest, not only of justice, but in humanity. We have been sitting down -- Mr. Graber is emotionally disturbed to the extent, if your Honor please, that he cannot cooperate in the defense. I am sure that medical science at this point has developed something that can calm Mr. Graber down so that we can proceed at two o'clock.

I have just asked in the interest of mercy, not in the interest of justice, and I think Mr. Graber will confirm the fact that he, at this point, is incapable of conferring with me. Although we are friends, again, he just can't do it, Judge.

I sat down and asked questions and things and he admits to me, now, that he can't answer these questions, that he is concerned about this, that and

other things, and I would only ask -- I believe it's approximately ten after eleven. We would be normally taking a luncheon recess in an hour and fifteen minutes and I ask that we adjourn now until two o'clock. We are going to take him to the Emergency Room in the hospital and wait for his physician to attend there and I will report to the Court exactly where Mr. Graber is, and I don't believe there is any serious objection by the United States.

MR. CADEN: I would prefer, of course, to start the trial.

THE COURT: I think we have to yield to the necessities of the occasion, but it is important that we get ahead and I think one thing that is most important for Mr. Graber to have in mind is that something like this, that overhangs a life, is best met and disposed of. It's not going to go away and if it is met and disposed of, I think that you will find that the process doesn't have any of the rigor you may have anticipated, and that the outcome is, of course, fated, as all outcomes are fated, by the events of the past.

MR. CUTTER: I told him, once we get past the first witness, there is nothing to worry about.

THE COURT: All right, we will recess until two o'clock.

THE CLERK: All rise.

(Recess taken.)

(2:05 p.m.)

THE COURT: Yes, gentlemen, are we ready to proceed?

MR. SUTTER: I have an application, if your Honor please?

Mr. Graber was taken from the courtroom to Mercy Hospital for the purposes of meeting with his physician. I did receive a message during the recess from Dr. Stefano. Actually, it was delivered to Mr. Frasier on my staff, not myself, and I have a note. I should like, if I might, to present it to the Court.

I've already shown it to the United States Attorney. Rather than present it publicly, because we do have members of the media here, if I might have that privilege of delivering this to your Honor, I should choose to do it in that manner. If your Honor wants to put it in the record, I suggest that it be done in the presence of Mr. Caden, the defendant and myself, outside the public media.

Do you want me to read it? I will read it.

THE COURT: It seems to me that everything has been put on the record to this point and it should be.

MR. SUTTER: Fine.

This is on the letterhead of Robert T. Stefano, M.D., P.C., Diplomate of the American Board of Medicine, 230 Hilton Avenue, Hempstead, New York.

Name: Raymond Graber;

Date: 9/2/76.

To: Judge Dooling.

"I have examined and spoken to the above-mentioned patient, today, in E.R.," which I assume means Emergency Room of Mercy Hospital.

"In my opinion, he is at a point of nervous exhaustion due to his arrest, etc. I feel that he should be home in bed.

"C" with a slant on top of it, which I understand to mean with sedation, "until 9/7/76."

Thereupon, appears a writing of Robert T. Stefano, which I believe to be the doctor's signature.

I have no basis of forming that opinion. We have spoken with the doctor. The defendant, at this point, is under sedation, and rather severe sedation.

Judge, I can tell you quite frankly, I have not been able to rationally communicate with this defendant. Mr. Frasier has seen this gentleman for at least ten times, possibly twelve. We have had a great deal of difficulty communicating.

Mr. Graber, of course, has had injuries sustained to him by virtue of his service with the United States of America in the war. It's probably the same war that you and I were in, Judge.

THE COURT: Not I.

MR. CUTTER: I was on our side. I just wanted to make that clear, and I can understand that when you are a sole survivor of a V2 attack, when you lose your internal ear, that you become emotionally involved and this has happened to Mr. Graber.

I can tell you, quite candidly, when we spoke, he was weeping; he was disturbed.

Judge, I don't think it's fair that we proceed at this point. I know of Dr. Stefano. He is a very honorable man. He is not one of the fellows a normal defense counsel would go to, "Give me a note. The guy is too sick to go to trial."

I have been through a lot of these cases, Judge.

I have been practicing now for twenty-four years in criminal defense. This is a genuine, genuine situation. Mr. Graber, in my opinion, and in the doctor's opinion, should have some time off. We told him a week and a half ago, take a week off. Relax. Take it easy. He's had ten years of service where he has never taken a day off in his life.

Judge, I earnestly implore the Court, not in the interest of justice, but in the interest of humanity, to adjourn this matter until the 7th. Let him be sedated. Let him have his time. Let him communicate with counsel, if your Honor please. I implore this Court to adjourn the matter until September 7, 1976.

May I have this marked for identification as a Court Exhibit?

THE COURT: Yes.

THE CLERK: Yes, sir. Marked for identification, Court Exhibit 1.

THE COURT: You see, we still have a number of bridges not crossed.

Assuming that it were proper to postpone the present trial, what kind of a trial would we be commencing on the 7th?

MR. SUTTER: If your Honor please, Mr. Caden has presented to me, now, a waiver of jury trial, which I am going to have executed by myself and by Mr. Graber.

THE COURT: I will tell you the problem: Assuming that we could, without disaster, go over to the 7th, the 7th and the 8th are really the only days available next week. I think the difficulty is the Judicial Conference comes on next Thursday. It's the 9th. Thursday at 2:00 p.m. it starts far away from the City of New York and continues through the 10th, Friday, and the 11th.

I don't know what we have scheduled for the 13th, so we would not, I think, have any leeway.

Now, if it were a non-jury trial, interruptions to admit such things as the trial of jail cases, would be feasible, if it did not mean that parties to the case lost control of their witnesses, which is a real problem. Witnesses, too, are human and expect to have definite times to appear in court and to be examined.

(continued next page)

THE COURT: (Continuing) Now, I think we have a problem here because what confidence could we have that between now, the 2nd of September, where strictly speaking, or at least from the point of view of the non-legal world, we have a little over one working day left between now and the 7th.

MR. SUTTER: That's correct, sir.

THE COURT: That the defense would be prepared to go forward on the 7th --

MR. SUTTER: If your Honor please, your chambers have been courteous enough to furnish me with a certificate of actual engagement. I think your Honor knows that I do have a homicide case that I am supposed to commence on the 8th of September. I have notified Judge Delin, Richard C., that I am engaged in this commitment before this Court, that I will not be available to go to trial on People v. Friedgood -- my obligation is to appear before this Court.

I told your Honor that the other day and I have appeared every time. I am preparing to go ahead. My defendant is not and all I ask is that we avoid one working day and commence on the 7th. We have the non-jury statement before us, a waiver, if your Honor please, of the right to trial by jury, from Mr. Caden.

I am prepared to execute that at this point but I ask, in the interest of humanity, we have the time to let Mr. Graber relax a little bit and, as my daughter would say, or as some would say, get his head straightened out.

THE COURT: Mr. Caden?

MR. CADEN: Your Honor, I have presently eight witnesses in the building. These witnesses range from the Chief of the Rackets Bureau from the Nassau County's District Attorney's Office to a secretary in my office, who might be leaving the office shortly for private employment, as well as six employees of the Department of Conservation and Waterways, who appeared at my request several times before in this matter.

The last time it was Tuesday of this week. Some of those, as well as the other five or six employees that I intend to call have been kind enough to adjust personal holidays and Labor Day vacations and the like around this trial, and I am deeply in their debt to the extent that they were willing to do that.

My judgment is, if Mr. Graber is capable enough to execute this particular waiver today, then

we go forward.

Secondly, I might suggest to Mr. Sutter and Mr. Graber that it has been my experience in the past, in cases such as this, that the defendant has a right to waive his presence at the trial. Counsel will be here and members of Mr. Graber's family are here and he is well represented.

Therefore, I would suggest the very real possibility that this trial commence today, that we take the testimony and if the defendant is capable of executing a waiver, perhaps it would be better for him, if he chooses, to waive his appearance for the first afternoon of the trial and the transcript of the witnesses can be provided to counsel and Mr. Graber when we again meet, whenever that next session should be.

THE COURT: Does that appear to you to be a feasible suggestion?

MR. SUTTER: Your Honor, that appears to be inhumane. Take a look at my defendant. Can you possibly put him on trial in his condition now?

Your Honor is a compassionate jurist. I can't go to trial with a man in that condition, Judge. I don't think it's proper and I can't get up here and

waive the right that he has without his knowledgeable consent.

THE COURT: That's the difficulty that I see, that if we go over to Tuesday, a waiver executed today, under the circumstances, and under these representations, could hardly be beyond impeachment and on Tuesday, we would be exactly where we are today, in the same turmoil and uproar.

Meanwhile, while I have absolutely no reason to question the sincerity and competency of Dr. Stefano, a doctor's examination is what we lawyers would call an ex parte examination. The United States has not, through a medical adviser of its choosing, examined the defendant.

MR. SUTTER: I would consent to such an examination.

THE COURT: That could hardly be done in time to start this afternoon or tomorrow.

Now, I don't know where we stand now. If we are to go over to Tuesday, as I think is inevitable, because I do not find myself free to go behind your representation and this is done wholly and entirely upon your representation and my belief that I must accept such a representation made in such unqualified

terms by counsel. I think we have to be prepared to proceed here, either by jury or non-jury, on Tuesday next.

Now, I think, meanwhile, it is for Mr. Caden to say whether he wishes to have the defendant examined by a medical adviser of the choosing of the United States Attorney's Office.

MR. CADEN: I have been authorized to make that application, if it were appropriate, and in view of what the Court has said, I would make that application.

THE COURT: Is that agreed to?

MR. SUTTER: To which I consent, your Honor.

THE COURT: I think you'd better seek your client's consent.

MR. SUTTER: I have already discussed that, sir.

THE COURT: Have you selected a doctor, Mr. Caden?

MR. CADEN: No, your Honor, but I can indicate, by the close of business today --

THE COURT: When can you have the examination conducted, do you believe?

MR. CADEN: I would not be able to provide that information until I talk with the doctor.

THE COURT: Before Monday or before Tuesday?

MR. CADEN: If the defendant is agreeable, most likely. If the defendant is agreeable, the doctors that are available to me, the ones that I know of, are in Manhattan or in Brooklyn, and I anticipate that would create a problem in and of itself.

THE COURT: I'm sure that there are doctors whom the Government could have confidence in in Nassau. It's a large, populous county.

MR. CADEN: I would certainly look for a doctor in Nassau County.

MR. SUTTER: May I be heard, your Honor?

THE COURT: Yes, sir.

MR. SUTTER: If your Honor please, I would respectfully request that wherever the physician may be, that the Government select that the examination be held within the County of Nassau. If your Honor will refer to the letter of Dr. Stefano --

THE COURT: I think, perhaps, in view of that letter which I think should be marked Court Exhibit 2 --

THE CLERK: So marked, your Honor.

THE COURT: An examination by a medical adviser of the Government's choosing might be stultified by the position taken in that letter, if an examination followed

the transportation of the defendant from Nassau to Manhattan or Brooklyn.

MR. SUTTER: If your Honor please, Mr. Caden and myself have just conferred off the record and the matter that I am referring to is the difficulty of Mr. Graber, according to Dr. Stefano, to travel, if your Honor please --

THE COURT: That's the material at the foot of page 1 and top of page 2.

MR. SUTTER: That's exactly what I am referring to. I have no objection to any doctor being appointed but I would respectfully request that the examination be held in the environs of Mr. Graber's residence.

In other words, somewhere within the County of Nassau.

THE COURT: Mr. Caden?

MR. CADEN: As I indicated before, I will do what I can. Quite frankly, I am constrained to say something that might be precipitous for me to say but in view of the fact that the defendant took it upon himself to drive from Nassau County to Cornell University and back again seems to me, without taking anything away from Dr. Stefano's observations, it appears to me that the defendant is quite capable of doing things when

he wants to, beyond those narrow observations made by the doctor.

I'm sure the doctor made those observations for whatever reasons he had.

Consider for a moment, like Mr. Sutter has indicated, this defendant has been at work for ten years without a vacation. Hasn't taken a sick day in six months. According to what Mr. Sutter told us on Monday, against his advice, he left this jurisdiction, took an arduous car ride with his family, returned, and quite frankly, I think he is, if he is capable, if that's the Government's burden to provide a medical examination, and it can only be done in Brooklyn and Manhattan, that there be some effort by the defendant to go to that place and have the examination conducted.

I am constrained to say anything more about this

THE COURT: Well, you see, Mr. Caden, I put the emphasis I did on the representation of counsel because of the otherwise compelling force of what you've said, but in these matters, I suppose there is nothing like the special circumstances attending trial on a criminal charge that could make a decisive difference in the physical capacities and nervous strengths. I don't know I am not a doctor.

If it can be arranged to have it in circumstances that would make an examination unimpeachable, from every point of view, including defendant's positions and representations, and those of his doctor, then it is ultimately desirable method of doing it; if it cannot be done, then I think I cannot very well issue a habeas corpus to remove him to Brooklyn or Manhattan, under these circumstances. The best the Government can do is tend to the opportunity of examination and set the matter at rest, and it would be up to him to determine the relative strength and flowing of inference and risks of taking an examination after an automobile drive.

MR. SUTTER: May I state this for the record, please: I know that Mr. Caden will do everything within his power to seek an examination within a reasonably proximate position of Mr. Graber's residence.

THE COURT: If it's compatible with the interest of the Government he represents.

MR. SUTTER: It's my Government, too, Judge.

He has been a thorough gentleman throughout. I know he is not going to try to push the thing. I would like to point out that it is my information, and I have no personal knowledge, that Mrs. Graber was the

driver of the motor vehicle when Mr. Graber went to Cornell University. I would point this out. I consent, absolutely, to an examination of Mr. Graber by a physician designated by the United States Attorney's Office.

I know in my own heart how Mr. Caden is going to handle it. I would point out to the Court, we have several well-qualified doctors in Nassau County. We are no longer a hick town. If he could select among his list somebody out here, I would be appreciative. I do not ask that it be a condition but I ask him as a brother attorney to have the examination at least held somewhere proximate to the residence of Mr. Graber.

THE COURT: I have nothing further to add to what I have already said and the examination, which is ordered, is an examination in the nature of an examination under Section 4244, really to determine the ability of the defendants, effectively, to consult with counsel and to embark upon the trial of this action.

Now, I leave to counsel the question of whether or not at this stage, I think it wise to discuss further and perhaps obtain a signature of the defendant to waiver of jury trial, or not.

MR. SUTTER: May I be heard, your Honor?

THE COURT: Yes.

MR. SUTTER: I have executed the waiver of jury trial as counsel for Mr. Graber, at this point. Mr. Graber, I believe, will recall that we discussed this on Monday, at some extended length, and he, at that time, indicated to me that he desired to waive a trial by a jury.

Correct, Mr. Graber?

MR. GRABER: Yes.

MR. SUTTER: May we have the record indicate that we have an affirmative nod.

To my knowledge, he has not changed his mind with respect to the same, but in view of the application that is being made, that the actual execution by Mr. Graber should be made on the 7th, but I will inquire of my client in open court, at this point.

Do you still desire to waive a trial by jury?

MR. GRABER: Yes, I will.

MR. SUTTER: I believe he said, "Yes, I will." I don't know if your Honor heard it.

Mr. Graber, could you speak a little louder?

MR. GRABER: Yes, I will.

MR. SUTTER: I don't think that we should do it at this point. It may be -- you know, Judge, if

we got a man who is emotionally disturbed, the last thing I want to do is have another attorney come in, if he gets convicted, that the waiver was not executed competently. My waiver is executed competently.

THE COURT: I think it is but I don't believe it carries much weight. It is the defendant.

MR. SUTTER: He has indicated that. I think I told you --

THE COURT: All I am interested in is, should I have a panel of 60 or 70 jurors here on Tuesday morning?

MR. SUTTER: No, no.

THE COURT: If we have to bring the jury out here, it will be Tuesday afternoon.

MR. SUTTER: May I do this, Judge? If there is a change in Mr. Graber's mind, which I doubt is going to occur, because we did discuss this thing for over an hour, I will communicate with your Honor's chambers long prior to Tuesday morning.

THE COURT: I will not be in on Saturday but my home phone number is in the book, as you know.

MR. SUTTER: I don't know what county your Honor lives in.

THE COURT: Kings County, of course.

MR. SUTTER: Most of these people are from

Nassau.

THE COURT: I am sure they are all emigrees from Brooklyn.

MR. SUTTER: I will have Mr. Graber available at his residence from the time he leaves the courtroom.

THE COURT: I must rely on you to carry through on that, on the medical examination.

MR. SUTTER: I will be in my office. Mr. Caden has my residence number and he has my weekend residence number.

THE COURT: Yes, sir. I thought you were about to say something further?

MR. CADEN: I was, your Honor.

I'm going to make every effort, at the moment the Court recesses, to find a competent doctor to examine the defendant. At this time, I don't know, based upon this holiday weekend, the Labor Day weekend, where I am going to get such a man, but I will find one. I will have this examination, if it is at all humanly possible, tomorrow, but I am not quite as convinced as Mr. Sutter that the examination will be within the confines of Nassau County. I will certainly consider doctors from Nassau County and doctors from other counties. I will make every effort to be reasonable.

I will give no assurances, however, to Mr. Sutter or anyone else as to where this examination takes place, but I solicit his cooperation and I know I will have it, that this defendant make himself available, since his wife is in court and apparently she drives, as I found that out. His son is here and I'm sure even Mr. Sutter would make someone from his office available, if the examination were required to be outside of Nassau County.

THE COURT: Do the best you can, because as I say, the light of Dr. Stefano's letter, it might be important to you to not have an impeachable examination.

MR. CADEN: Yes, sir, I am aware of that. Where are we meeting next?

THE COURT: Here. I think we agreed to have the trial here in Westbury because of the difficulties he has in using public transportation.

MR. CADEN: Do I assume we will begin the case on Tuesday morning, 10:00 A.M.?

THE COURT: Yes. If it turns out at that time that it should be a jury case, we will proceed to pick a jury Tuesday afternoon.

MR. SUTTER: I don't anticipate any changes in the defendant's choice.

THE COURT: Nevertheless, we will be ready for it.

THE CLERK: All rise.

(Thereupon, the proceeding was adjourned until Tuesday, September 7, 1976, at 10:00 A.M.)

* * *

WAIVER OF JURY TRIAL (FILED SEPTEMBER 7, 1976)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

-against-

RAYMOND GRABER,

Defendant.

- - - - - - - - - - - - - - - - - - - X

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. NY
★ SEP 7 1976 ★
TIME A.M.....
P.M. X.....

WAIVER OF JURY TRIAL

IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED by and between the defendant RAYMOND GRABER and the UNITED STATES OF AMERICA, that the above entitled case in which the defendant is charged with violation of Title 18, United States Code, §1623, be tried by the Court without a jury, and the defendant herein being advised of his rights to a trial by jury in this case, hereby waives his rights in open court to a trial by jury.

Dated: Brooklyn, New York
~~August 31, 1976~~
September 1, 1976

Raymond D. Graber
Defendant

John Sutter, Esq.
Attorney for Defendant

CONSENTED TO:

DAVID G. TRAGER
United States Attorney
Attorney for UNITED STATES
OF AMERICA

By: John L. Caden
John L. Caden
Assistant U.S. Attorney

APPROVED:

UNITED STATES DISTRICT JUDGE

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JB/ss

laml

THE CLERK: United States of America versus Raymond Graber.

MR. SUTTER: Judge, may we have a sidebar.

THE COURT: If there is some good reason for it, certainly.

MR.SUTTER: I think there is. I have discussed it with Mr. Caden.

THE COURT: Very well. Come up here, gentlemen.

MR. SUTTER: Thank you, sir.

(The following took place at the sidebar.)

MR. SUTTER: I don't think you have to put it on the record.

THE COURT: I don't have anything off the record, Mr. Sutter.

MR. SUTTER: Fine.

If your Honor please, historically for years we have had a father-son touch football game on Labor Day, Sunday. And as I get older, I get slower, and the kids get bigger. And they play varsity football. I fractured two ribs. So I may be somewhat slow in taking an objection. And I ask the indulgence of the Court to merely say, objection, then give me a chance to get up to address the Court.

THE COURT: I always do insist that counsel

stand. Since you are suffering under grave physical disability, you will be excused.

MR. SUTTER: It only hurts when I breathe.

THE COURT: Well, I implore you, don't stop breathing.

MR. SUTTER: No sir, I shall not.

THE COURT: All right.

MR. SUTTER: I would also like the opportunity to have Mr. Graber make a statement to the Court as to whether or not there exists a true attorney-client relationship. I think it's important in view of the statement he made before.

THE COURT: If Mr. Graber wants to come forward, surely.

MR. SUTTER: He will do it in open Court the way he did it the last time.

THE COURT: All right.

MR. CADEN: Your Honor, may I also add that I will provide Mr. Sutter with the 3500 material for at least today. I have photostated -- and as well as the fact that I have made all my files available in this case, which are on that truck, for his perusal and that of his client. If there is anything that he is particularly looking for that he can't find, I probably can accomodate him. But I represent all the

information concerning this investigation is in the Courtroom and it is at his disposal.

MR. SUTTER: Mr. Caden has been most honorable in this prosecution and there is no question with respect to his integrity.

THE COURT: Okay, gentlemen.

(End of sidebar.)

MR. SUTTER: May we have one moment.

THE COURT: Yes. Surely.

MR. SUTTER: Thank you.

May it please the Court, I would at this time like to present to the Court a waiver of jury trial in this particular matter executed in open Court by Mr. Graber, by myself the last time we convened, and by Mr. Caden today.

THE COURT: All right. It will be filed, gentlemen. I have approved the waiver.

Are we ready, gentlemen?

MR. SUTTER: If your Honor please, I believe Mr. Graber wants to make a statement.

THE COURT: Do you, Mr. Graber?

THE DEFENDANT: Yes.

THE COURT: Very well, sir.

MR. SUTTER: Judge, please excuse me. I am sorry about this.

THE COURT: Very well.

THE DEFENDANT: Your Hnor , last week, as a result of pernaps experiencing the most traumatic event of my life, I guess I didn't have it all together. I do have an attorney-client relationship at this time. Mr. Sutter and myself had a few friendly chats, brief chats via telephone from my home to Connectic t over the long holiday weekend. I think I understand things a little better now.

I would also like to say, which is an extension of the comments I seem to recall I made last Thursday, my respect for the flag I see to the right -- and if we do not have law and respect for it, justice in our nation, we have nothing. If in any way the events of last week offended the Court, I am terribly sorry.

THE COURT: That's the least of your concerns. I am immune to offenses because I'm very conscious that it is no easy thing to stand trial in such a case as this. It's quite understandable.

All right, sir.

THE DEFENDANT: Thank you, your Honor.

THE COURT: Are you ready, gentlemen?

MR. CADEN: Yes, your Honor.

120a

GOVERNMENT'S OPENING (Tr. pp. 50-55)
(pp. 120a-125a)

MR. CADEN: Your Honor, Mr. Sutter, may it please the Court:

In 1975 a federal grand jury, sitting in the Eastern District of New York, began an investigation into allegations that employees of the Town of Hempstead, including employees of the Department of Conservation and Waterways, which is a governmental subdivision of the Town of Hempstead, were required to kick back 1 percent of their annual salary to the Town of Hempstead Republican Finance Committee in order to obtain jobs, get raises, or secure promotions. During the course of this grand jury investigation one of the departments that were under investigation, as I indicated, was the Department of Conservation and Waterways. And Mr. Graber, for the last several years, has been the Deputy Commissioner of that particular department.

The indictment charges that on July 11, 1975, the defendant knowingly and willfully lied when he appeared before that grand jury and when he testified concerning his knowledge and his personal participation

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concerning that corrupt practice within his own department.

In substance, the defendant took an oath, testified to -- before the grand jury in essence, that all he knew about this corrupt practice was what he read in the papers. And secondly, that in the years that he had worked for the Department of Conservation, going back to 1966, that he had never asked anybody to make a contribution; he had never suggested to anybody that they make a contribution. And that, in essence, in those cases where he did take employee contributions, they were only in cases where the employee asked him to forwardothose contributions to the Town of Hempstead Republican Finance Committee.

Now, the evidence will show quite the contrary. The evidence will show that the defendant who testified before that grand jury on July 11th, that all he knew about the 1 percent practice was what he read in the papers, was in fact the same individual who was the person responsible for organizing, soliciting and collecting contributions from fellow employees; and two, would also deliver those moneys to the Town of Hempstead Republican Finance Committee.

In essence, that defendant was Mr. One Percent in the Town of Hempstead, as far as the Department of

Conservation and Waterways were concerned.

The evidence will show that at least since 1968 Mr. Graber was a prime mover in soliciting and collecting the 1 percent contribution from his fellow employees.

Mr. Graber's practice would be in the fall of every year, around September or October, he would obtain information with regard to the annual salary of every employee within his department. Generally speaking, there were approximately a hundred to a hundred and ten employees within the Department of Conservation and Waterways. Mr.Graber would take this annual salary -- this information, and many times it included overtime that the -- overtime wages that the employees had received for the prior year, and then calculate what 1 percent of that particular amount was.

After he had obtained that 1 percent figure, Mr. Graber would advise certain supervisors within the department that it was the time of year for everyone to make a contribution. He would inform the supervisors as to what the 1 percent or annual salary of these employees were. And he told the supervisors to go out and to obtain the contributions from their fellow employees. And that the money was to be given

to the Town of Hempstead Republican Finance Committee, and preferably that the money would come through Mr. Graber.

In some years Mr. Graber actually prepared what is referred to as index cards, the 3 by 5 cards, with the employee's name, his annual salary, and in some cases it is the 1 percent figure, meaning the 1 percent that the employee was to contribute. And this information was actually contained upon the card.

Now, after the supervisors passed the word on -- whether it be orally to their fellow employees or by disseminating these particular cards, Mr. Graber sat back in the office at Point Lookout and waited for the employees to make their contributions.

When employees did not make the contributions, in many cases Mr. Graber would call the supervisor back and ask them to check with the particular employee and find out why he had not contributed or was late in making his contribution.

And for many years since 1968 this system worked smoothly and efficiently. Occasionally, however, some employees did not give. And when they did not give, Mr. Graber, at least on two occasions, in one particular case, informed the supervisor that the employee who

worked under him would not get any additional overtime unless they paid their 1 percent. On another occasion he told the supervisor not to assign a particular employee any further overtime because that employee had not give his 1 percent that year.

Now, not only did Mr. Graber solicit and collect political contributions through using supervisors as intermediaries, but in some years he actually did the asking himself. It was not uncommon for Mr. Graber to ask employees who worked in the administration building in which he worked to make a contribution to the Town of Hempstead Republican Finance Committee.

On one occasion in his office Mr. Graber asked an employee for his contribution, his 1 percent contribution for the year. And when that employee told Mr. Graber that if he did make his contribution that year he would mail it in, Mr. Graber told the employee that that money had to come through him.

On another occasion when an employee peaked by the fact that she was required to give her 1 percent, gave her check to Mr. Graber to the exact penny, Mr. Graber told her to take her check back and to round it off to the nearest dollar.

There will be also testimony that when new employees came to work for the Town of Hempstead in the Department of Conservation and Waterways and they worked in the administration building that Mr. Graber worked in, it was not unusual for him to come up to that employee, tell him about the 1 percent practice, and tell him or her, that employee, that they need not give the entire 1 percent because they had not worked the full year. And Mr. Graber would then give that employee a specific amount that he or she should contribute.

In essence, then, this evidence will show that the defendant in the fall of every year, since approximately 1968, organized and directed the soliciting and the contribution of the employees' contribution for the Town of Hempstead Republican Finance Committee. And then when he appeared on July 11, 1975 before a grand jury, he lied about his knowledge and his personal participation in that corrupt system.

Thank you.

EXCERPT FROM DEFENSE OPENING (Tr. pp. 56-59)
(pp. 126a-131a)

May it please the Court, Mr. Caden:

I think that's an intriguing diatribe against what everybody knows is a normal political situation. I am more interested, however, if the Court please, as to what we are charged with. We are not charged with soliciting political contributions. We are not charged with making out 3 by 5 index cards. We are not charged with running a political organization. We are charged with the material misstatement in front of a grand jury. And as I didn't do on Sunday, I would like to keep my eye on the ball today.

The indictment merely states that the testimony of Raymond Graber, as he then and there well knew and believed -- Paragraph 5 -- was not true, in that he had suggested to Town of Hempstead employees that they should give a portion of their annual salary to the Republican Finance Committee, and he approached Town employees to solicit such contributions.

Now, if you go back right in the face of the indictment, Mr. Graber admitted that in front of the grand jury. He never denied that, Judge. He talks about the Hinderland Building and how he sent the supervisors out to make those political contributions. And I am now, Judge, on Page 3 of the indictment.

He says, I have no direct communication with him. That's what Mr. Caden says in his opening.

I have never solicited them. Okay. But as August and September came around, individuals and supervisors started calling up or coming in. And believe it or not, sir, many of them, although they know, if they had overtime in and their check is not correct -- do you know their annual salary.

Somebody asked for their annual salary. They get it.

Question: All right.

And then you wrote it down.

Answer: If somebody will ask either in person or by phone, will you figure out 1 percent for me. He has to take the initiative. Or in some cases, it is his supervisor who will come in and say, John, Bill and Joe all want to know what they make. Or John and Bill want to know what they make, and Joe wants to know what 1 percent is. I will have the girls write it out for them. Okay.

Then did you give it to them?

Answer: I have given it to individuals. And in some cases to their supervisor when they took the initiative and they asked me for it.

If your Honor please, that testimony is exactly that which the Government has outlined as the so-called crime in this case. There is no testimony in the Grand Jury minutes wherein Mr. Graber at any time denied that he has suggested to Town of Hempstead employees that they should give a portion of their annual salary to the Republican Finance Committee, and nowhere else in the Grand Jury testimony that he had approached Town employees to solicit such contributions. That's what he is charged with.

Be this moral or immoral in a political atmosphere, I cannot judge. I only know we are charged with a material misstatement. And there is no such material misstatement.

I would respectfully request at this time that your Honor be given the Grand Jury testimony of Mr. Graber and find where this indictment is sustained by such testimony. It is just not there, in my opinion, sir, and I have studied it long and hard. There is no material misstatement.

If your Honor can satisfy himself as to where in that testimony Mr. Graber denied soliciting political contributions, where he denies approaching Town employees, then we have got a trial. I would ask

your Honor preparatory to the hearing of testimony that you look at that Grand Jury testimony and compare it with Paragraph 5 of this indictment and see whether or not a motion lies on the opening statement to dismiss.

THE COURT: Mr. Caden, do you wish to respond.

MR. CADEN: Well, only in that, your Honor, I think that I made myself as clear as I could possibly be in my opening. I don't want to regurgitate it, but I think that the questions and the answers -- especially Question No. 1, which is on Page 3, indicate that Mr. Graber in his own way indicated that, A, he was a person whose function it was, was solely to transmit or to deliver contributions made by Town of Hempstead employees to the Republican Finance Committee.

And secondly, on Page 3, where the three asterisks end, he then indicates that he himself was not involved in the solicitation of those contributions.

And lastly, where the three asterisks end again, that is where the sentence, -- particularly, as one example, and I can give you many, sir, where my secretary came to me, and Mr. Graber also indicated that at no time did he provide information or was the originator of information concerning this practice.

My suggestion to the Court would simply be this,

that the Government be allowed to present this evidence, and after hearing the evidence that the proper motion be made under Rule 29 of the Federal Rules of Criminal Procedure, and that -- rather than hearing an argument by counsel with regard to what I consider to be the Government's proof. But I provide that answer because I believe that that is the answer.

THE COURT: Well, I take it that Mr. Sutter's point is that if you look at the whole of the Grand Jury testimony, not excluding the parts quoted in the indictment, that it would not show the falsity charged in Paragraph 5.

MR. SUTTER: That's correct. Under the Bronson Rule.

MR. CALEN: I think Bronson deals with an entirely different situation.

(Continued next page.)

MR. SUTTER: It deals, I submit, Mr. Caden and your Honor, it deals with whether or not you have the sufficient preciseness in questioning as against the indictment. Now I well realize that we are charged with a material misstatement rather than with perjury, and the difference there, of course, is that under the other section you would have the two-witness rule. Now here we don't have to have it because the Congress in their infinite wisdom has determined that you don't need it.

I would say this to your Honor, that nevertheless there must be some proof. Now we have heard everything that he has to say but everything that Mr. Caden has to say Mr. Graber testified to --

MR. CADEN: I would not agree with that, but --

MR. SUTTER: That is okay.

THE COURT: I can say that on its face the indictment is false or untrue.

Now, if your argument is that the whole of the Grand Jury testimony somewhat alters the effect produced by the language quoted in the indictment, then that is quite another matter. But I think it is something that we have to best determine at the close of the Government's evidence.

COLLOQUY (Tr. pp. 62-63)
(pp. 132a-133a)

MR. SUTTER: Now, Judge, there was an examination held on Mr. Graber's condition and I don't know if that report has been submitted to your Honor. In my understanding, although I may be inaccurate and I am subject to correction by Mr. Caden, it is that the Government's position has stated that Mr. Graber is suitable to go to trial but that we should

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have breaks both in the morning and in the afternoon during the trial sessions. And I therefore accordingly respectfully request such.

THE COURT: I usually had a midmorning and a midafternoon break.

MR. SUTTER: Okay, fine.

Thank you, sir.

xxx

EXCERPTS FROM TESTIMONY OF JAMES DRUKER (Tr. pp. 63; 64-65; 67-68; 69; 76; 79; 80-83; 96-100) (pp. 134a-147a)

xxx

(Tr. p. 63)

Q Mr. Druker, by whom are you employed?

A I am employed by the Nassau County District Attorney's office as an assistant district attorney.

Q How long have you been with that office?

A Approximately a month and a half.

* * *

(Tr. pp. 64-65)

Q Now, during your duties as an assistant United States attorney in the capacity of chief of the Corruptions Section, did you conduct a grand jury investigation in 1975 concerning contributions by the Town of Hempstead employees to the Town of Hempstead Republican Finance Committee?

A I did.

Q And would you please explain what the nature of that investigation was?

A Briefly, the United States Attorney's Office had received numerous allegations regarding an alleged corrupt political contributions system in Nassau County, and the allegations were to the effect that both the county and municipal employees were forced to contribute or kick-back one per cent of their gross annual salaries to the Republican Party.

Now with regard -- we commenced a grand jury investigation which was to determine, number one, whether there was or was not such a one per-cent system.

And, secondly, whether if such a system existed the contributions by the employees were voluntary or whether

they were forced to so contribute by their supervisors or other personnel;

And, thirdly, whether if such contributions existed, whether it was violative of the several federal statutes about which we are considering in this case.

Q And particularly what federal statutes were under consideration by your office?

A The Civil Rights Act and also the Hobbs Act, 18 U.S. Code, Section 1951.

Q And you were talking about the Civil Rights statute, and that is 18 U.S. Code, Sections 241 and 242?

A Yes, sir.

* * *

(Tr. pp. 67-68)

THE WITNESS: The scope, you are asking me, the scope of the inquiry?

Q Yes. And particularly I make reference to overtime and job promotion.

A Among the other allegations, among the many allegations were included these:

One, that individuals could not in the first instance get a job with the Town of Hempstead unless they agreed beforehand or were willing to give the one per cent. That was one of the things that we were investigating to determine for truth or falsity.

Secondly, that in numerous departments of the

Town of Hempstead, including I believe the Conservation and Waterways Department, employees could get up to $3,000 or more a year on overtime, and it was alleged --

MR. SUTTER: I object to what he believes; I object to what he believes. His statement was that he believed.

THE COURT: If it can truthfully be done so, it must be phrased in terms of what information was brought to the United States Attorney's Office.

THE WITNESS: All right. I am not stating that, I mean I wasn't testifying that I believed, I was testifying that I believed these to be the allegations, and that is from the best of my memory, that employees could and did get up to $3,000 a year in overtime and that it was alleged that if they did not give their one per cent to the Republican Party each year, then through their supervisors they would be deprived of some or all of their overtime.

This was one of the things that we sought to determine, as to whether or not it was true.

Further, it was alleged that employees in some instances, and in some departments where there was no overtime, they would just be outright disciplined by being transferred to less desirable job sites or less desirable positions if they didn't give the one per cent.

"The United States Attorney's Office and the Grand Jury further sought to determine whether or not this was the fact.

* * *

(Tr. p. 69)

Q During the course of that investigation you were aware of the number of witnesses that were called, and roughly, how broad this inquiry was. Would you please tell us.

A There were approximately 1500 employees of both the Town and County interviewed, and I think to the best of my recollection it is over one thousand of these were from the Town of Hempstead and of these between three and four hundred wereactually called into the Grand Jury to testify. These included workers on the bottom rung of the ladder all the way up to supervisors, foremen, deputy commissioners and commissioners, as well as individuals from the political party concerned.

* * *

(Tr. p. 76)

Q And what were you investigating?

A We were seeking to determine whether or not there was an organized system involving the Town of Hempstead hierarchy and the Republican Party for the Town of Hempstead whereby employees of the Town of Hempstead were forced to give one percent of their annual salaries to the Republican Financial Committee at the risk of either being terminated or disciplined or removed from overtime.

Q Well, that is not what you are charging Mr. Graber with: Right?

A Mr. Graber, to the best of my knowledge, was charged with having made materially false statements before the Grand Jury investigating these matters.

* * *

(Tr. p. 79)

Q From January 1975 until today's date, has a Grand Jury returned any indictment other than that alleging material misstatements?

A I can only say that up until the time I left no other indictments had been returned.

Q And that was a couple of months ago; is that right?

A Yes, sir.

* * *

139a

(Tr. pp. 80-83)

Q Now, would you take a look at Government Exhibit 1.

A Any particular portion of it?

Q The whole thing, and tell me where Mr. Graber denied that he suggested to Town of Hempstead employees that they should give a portion of their annual salaries to the

Republican Finance Committee.

MR. CADEN: Your Honor, I object only because I think this is the question for this Court to determine.

I have outlined and again as well as what I said in the opening statement what the proof would be and I don't understand the purpose of Mr. Druker drawing these conclusions from this.

MR. SUTTER: He drew the indictment, if your Honor please, he accused this man of denying that and lying about it, and we are going to find out now whether or not he did, and I thought that was the issue in the case, sir.

THE COURT: No. I think that he is pretty much limited to what he has cited in the indictment, the Grand Jury has founded a true bill and those passages must be looked to to determine whether or not the charges of Paragraph 5 are made out.

Now there are other matters, of course, because the language quoted from the Grand Jury minutes in the indictment might have occurred in such a setting as to completely alter the effect of what is quoted. If they are in substance out of total context and are totally defective, then the seventeen or eighteen

passages of testimony would be quite different. But on the face of the indictment those passages so selected I conclude at this time are those which if not in some way mitigated by the evidence would make out the charge of Paragraph 5.

MR. SUTTER: If your Honor pleases, may I be heard.

THE COURT: Certainly.

MR. SUTTER: If your Honor pleases, there is nothing in the indictment and the portions that are quoted where Mr. Graber in any manner denies that he suggested to the Town of Hempstead employees that they should give a portion of their annual salaries to the Republican Finance Committee.

Judge, I ask you to please, sir, read that testimony very carefully. Your Honor, there is nothing in there where he denies that. There is nothing in there where he denies that he approached Town employees to solicit such contributions. He admits it, sir, he admits it right in the face of this indictment.

I would ask your Honor most earnestly to read that carefully.

THE COURT: I have read the indictment carefully, I have not read the testimony and I don't

find the disparity that you suggest here on the face of the indictment.

Now I am not saying that it is so clear that the indictment must survive even though these words are proved at the motion at the close of the Government's case or at the close of the whole case, but what I do say is that the language quoted does make out the cnarge of Paragraph 5, if that language is read by what seems to be its total and principal sense. If read in that manner, it seems to me far from indicating a regular or other solicitation of the employees; it bodes forth a cooperativeness with and a service to employees anxious to make contributions without his impulse or stimulation or solicitation.

Now that is what the language quoted appears to say. Whether that is a fair statement of the whole of the seventeen or eighteen passages or testimony and the fair effect of all of it, is another matter.

* * *

(Tr. pp.96-100)

Q Correct. What I am trying to get at is, where did you ask him whether or not he solicited town employees to give a percentage of their annual salary to the Town of Hempstead Republican FinanceCommittee?

A As I stated, I think that it was asked him in substance if not in those exact words.

Q Not in those words, right? I mean you buythat, don't you, Mr. Druker?

A Agreed.

Q Okay. Would you agree with me also, sir, that while Mr. Graber was allegedly under oath, he was never asked by you or any other assistant U.S. attorney whether or not he had approached Town of Hempstead employees to solicit contributions?

A I have to go back over the minutes.

Q Take your time, sir.

A You see, again, you're asking me now to characterize testimony like on page 13. He was asked, how many employees there were in his department. And he answered that, about 110.

Then he was asked about the preparation of the cards, referring again to these so-called one-per-cent cards, and he gave a long explanation about his secretary and how the employees were to call her up, and that he told the

secretary, give the information to anybody who wants them.

And then we continue on.

I asked him at the bottom of page 13 about the preparation for the cards.

Q He admitted that, didn't he?

A Well, again he claimed that all of these -- these were in response to employee requests. Then we continued along the same line.

Q He's not charged with --

A He's charged with giving false answers to some of these questions, if not all of them.

Q Which ones?

A I think the indictment pages --

Q That's what I am trying to get at.

A Two through four will give that to you. If you want me to take the indictment and go through the minutes and tell you what pages they are on, I can do that.

(Continued on next page.)

JB:em
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Q Mr. Druker, what I am trying to get at is, he is accused here of making material misstatements in two areas; correct?

A Yes, sir.

Q And I am referring to paragraph five of the indictment. What I want to know is, where are those questions and where are his allegedly false answers?

A One I might refer to is the -- page two of the indictment.

"Question: All right. Now, did you play any role within your department in actively soliciting these contributions from employees under you at any time?"

I think that covers what you have just referred to, Mr. Sutter.

Q That says "employees under" him; right?

A Yes. As deputy commissioner.

Q Yes. But that's not what the indictment charges; right?

A Mr. Sutter, I am not here, I don't think, to debate the -- the indictment speaks for itself. And I think that's what Judge Dooling's function is, as finder of the facts.

Q In other words, you don't want to answer that one.

A If you want my opinion, the indictment charges in substance that he was asked questions regarding his involvement in the one per cent system, whether it was an active or passive role. And his testimony was that it was a passive role. And that's --

Q You didn't charge him whether it was active or passive, did you?

A He's charged with giving false answers to specific questions which are set forth at pages two through four of the indictment.

Q Those are the questions that you solely relied upon; is that correct?

A That would be something Mr. Caden would have to answer, whether he is relying solely upon these questions or other questions.

Q You prepared the indictment, didn't you, Mr. Druker?

A I prepared an indictment which the Grand Jury voted upon and which the defendant is now on trial for. But I am not going to dictate trial strategy. Mr. Caden, I am sure, at the appropriate time will represent to the Court which portions, if any, or all of the indictment he is relying upon. I don't think that is my function, Mr. Sutter.

Q All right. Fine.

Did you turn over all of the information from the U. S. Attorney's Office to the Nassau County D.A.'s office concerning this investigation?

A No, not all.

Q Most?

A Percentagewise, I'd say, a good deal. Whether it's pursuant to a court order that we obtained -- we turned over a good deal of the grand jury minutes and some of the documentary evidence to the Nassau County District Attorney.

Q And the U.S. Attorney's Office obtained that, that court order?

A Yes.

Q Under your auspices or direction?

A Yes.

Q And now you are a bureau chief of the Nassau D.A.'s office, right?

A Yes.

* * *

EXCERPT FROM TESTIMONY OF IRENE B. BEVILACQUA (Tr. p. 108)

(tr. p. 108)

Q You cannot testify, can you, ma'am, that you took everything down that was said?

A I would -- I did. I usually do.

Q Well, I know you usually do.

A I mean, reporters are human and they do make errors.

Q That's just what I'm getting at.

A According to this transcript, everything is true and accurate. This transcript, I represent --

Q Right. But you can't tell us that everything that was said in that grand jury room was put down on your tape; right?

A I can't say for sure.

* * *

EXCERPTS FROM TESTIMONY OF YOLANDA SPERANZA (Tr. pp. 113; 115; 117; 118-120; 123-125; 127; 128-129; 130) (pp.149a-156a)

(Tr. p. 113)

Q During what period of time did you work for the Department of Conservation and Waterways?

A 1966 to 1974.

Q Will you describe your duties while you worked for the Department of Conservation and Waterways?

A I was secretary to the director of the department.

Q Who was that?

A Harold Udell.

Q Is Mr. Udell's title now Commissioner?

A Commissioner, right.

Q What is, if you know, Mr. or Commissioner Udell's role in the Department of Conservation and Waterways?

A He is head of the department.

* * *

(Tr. p. 115)

Q All right. Now, during the years that you worked for the Department of Conservation and Waterways, did you make contributions to the Town of Hempstead Republican Finance Committee?

A Yes.

Q For what years, if you know?

A 1966 through 1973.

Q Approximately how much did you contribute in those years?

A One per cent of whatever I was making.

* * *

(Tr. p. 117)

Q Now, in years when you didn't keep receipts, that is, for the years 1966 through 1969, is it your testimony, though, that in those years you also contributed one per cent of your salary to the Town of Hempstead Republican Committee?

A Yes.

* * *

(Tr. pp. 118-120)

Q Now, Mrs. Speranza, in the years that you paid one per cent of your salary to the Town of Hempstead Republican Finance Committee, how did you make those monies payable to the Town of Hempstead Republican Finance Committee? How did you make it payable? Cash or check.

A No, it was a check.

Q I see. Would you please explain the circumstances under which you donated these monies for the Town of Hempstead Republican Finance Committee, how this occurred every year?

A Well, Mr. Graber would come around and remind us that it was that time of year again. And, you know, we would give the checks to him.

Q Now, when you say Mr. Graber would come around and remind you that it was that time of year, do you recall what if any conversation he or you had? Can you recall any conversation?

A He would just say -- one time he said that the elephant has his trunk out again, to remind us that the

one per cent time was -- one per cent of our salary.

Q Did you ever make any contributions or donations to the Town of Hempstead Republican Finance Committee in the years 1966 through 1974 without first being reminded by Mr. Graber?

A No. I was always reminded.

Q Is that true for every year?

A Yes.

Q Where did you have these conversations where Mr. Graber reminded you it was time to make your contribution or donation?

A He would come into my office.

Q Is that where you described before?

A RIght.

Q Now, after he reminded you, what if anything didyou do?

A Nothing. I just said, "All right," you know, and in a few weeks I gave him the check.

Q Now, about what time of the year did these conversations take place?

A Starting in the beginning of September, I believe.

Q And is that in 1966?

A Yes.

Q And for every year thereafter?

A Right.

Q Now, you indicated that you made a check out. Who did you give the check to?

A Mr. Graber.

Q Where did you give Mr. Graber the check?

A I either went into his office and -- or when he came into my office, I would give it to him.

Q In all of the years -- that is, 1966 through 1974, did you give a check to Mr. Graber?

A Yes.

* * *

(Tr. pp. 123-125)

Q May I ask you this, ma'am:

Do you recall definitely that it was Mr. Graber who first told you about the one percent contribution?

A As far as I can recall, yes.

Q Well, back when you testified in front of the

Grand Jury you said you thought that is the way it occurred: Right?

A Right.

Q You are not sure about it, are you?

A I'm as sure as I am -- I'm almost sure, no one else came around and asked for the money.

Q I'm not asking you about whether he had asked you for the money, I want to know who told you about the one percent first?

A Mr. Graber, as far as I can remember.

Q But you are not positive, are you?

A I am pretty positive.

Q Well, do you recall being asked this question on Page 3 of the Grand Jury testimony by Mr. Druker -- well, to orientate, I'm going to start on Page 2, the bottom.

Okay?

"Question: Now, did there come a time while you were with the Town when you heard something to the effect that Town employees were expected to give one percent of their annual salaries to the Republican Party?

"Answer: Yes.

"Question: How did you first hear it, as best you can recall?

"Answer: I think -- I'm trying to remember, I think I was approached by the Administrative Assistant."

That was referring to Mr. Graber, right?

A Right.

Q That was your best recollection back in '75: Right?

A Right.

Q That you thought it was him.

A Right.

Q And it is still your best recollection; isn't it?

A Yes.

Q But you are not sure, and that is what I am trying to drive at.

A It was, there was no one else that came around to tell us that, to tell us of the one percent.

Q Now it's a fact you heard it from other employees?

A I probably might have heard it from other employees.

* * *

(Tr. p. 127)

Q Did anybody tell you that if you didn't contribute you wouldn't get an advancement?

A Not directly.

Q Did Mr. Graber ever tell you that?

A No.

* * *

(Tr. p. 128)

Q Did Graber ever tell you that if you didn't make a contribution that you weren't going to get that job?

A No.

Q Did he ever tell you that you couldn't have the job if you didn't make a contribution?

A No.

* * *

(Tr. pp. 128-129)

Q Well, did he ever tell you that if you didn't contribute you wouldn't get overtime?

A No.

Q These are just things that all you gals and fellow workers assumed: Right?

A Right.

Q But he never told you any of those things?

A No.

Q Did he ever force you to make a contribution?

A No.

Q Were you ever threatened with anything if you didn't make a contribution?

A No.

Q Did you ever call Mr. Graber's secretary to find out what one percent would be in a contribution?

A No.

* * *

(Tr. p. 130)

Q By the way, did you ask him or didn't you?

A I think on one or two occasions I might have asked him, I don't remember.

Q Not what you might have, please, ma'am.

A I can't remember exactly.

* * *

EXCERPTS FROM TESTIMONY OF THOMAS E. DOHENY (Tr. pp. 140; 141; 142; 144; 146; 147; 148; 149; 157; 167-168)
(pp. 157a-162a)

(Tr. p. 140)

Q Mr. Doheny, by whom are you employed?

A The Town of Hempstead, Department of Conservation and Waterways.

Q What are your duties in the Department of Conservation and Waterways?

A I am Assistant to the Commissioner in charge of the conservation division.

* * *

(Tr. p. 141)

Mr. Doheny, have you made contributions to the Town of Hempstead Republican Finance Committee since being employed by the Department of Conservation and Waterways?

A Yes, I have.

Q And for what years?

A From 1968 through 1973 or 4.

Q Avery year?

A Yes.

* * *

(Tr. p. 142)

Q Approximately how much do these contributions come to each year that you make to the Town of Hempstead Republican Finance Committee?

A Approximately one percent.

* * *

(Tr. p. 144)

Now would you tell us the circumstances under which you would make those contributions to the Town of Hempstead Republican Finance Committee each year, please.

A Well, about the time that I described to you, about September, October of each year, we would be reminded as to the fact that the donation was due and that we should proceed to hand in our checks as soon as possible.

Q And who issued, who issued those reminders to you specifically?

A Mr. Graber.

Q And in all those years you contributed the one percent?

A Yes, up until 1973 or 4 when I gave my donation through the Republican Club which was just being formulated in Point Lookout.

* * *

(Tr. p. 146)

Q Other than those years, to whom did you give your one percent check to?

A Mr. Graber.

* * *

(Tr. p. 147)

Q In those years or in that particular year ad you have indicated, where you paid in November, would you have or did you have any conversations with Mr. Graber concerning being late with your one percent contribution?

A Well, not that I was late per se but it was just -- he just reminded me they had not received it yet. I told him I was in the process of saving up, so to speak, from check to check.

(Tr. p. 148)

Q Now, during any of the years that you made contributions and you gave the checks to Mr. Graber, did you ever receive a card, that is let us say an index card, with your name and any other information on it?

A I remember receiving one card.

* * *

149

(Tr. p. 149)

Q What information was contained on the card?

A My total salary for that particular year.

Q And do you recall ever asking Mr. Graber for this information?

A No, I did not.

* * *

160a

(Tr. p. 157)

Q When you first commenced to contribute one per cent, despite the inaccuracy of this report --

A Mm-hum.

Q For what reason did you do so?

A It was an accepted practice explained to me by Mr. Graber.

Q Did you ever tell that to the FBI?

A I can't remember that.

Q Well, didn't you tell the FBI that you contributed one per cent of your salary because your fellow workers were contributing one per cent?

A That's also true. My fellow workers were also giving one per cent.

Q And that's why you started to do it, right?

A I was asked by Mr. Graber to contribute.

Q Did you ever tell that to the FBI?

A I have no recollection that I did.

* * *

(Tr. pp. 167-168)

Q Were you at any time pressured by any person, including Mr. Graber, to make a contribution to the Republican Party?

A No.

Q Did Mr. Graber at any time tell you that you had to make a contribution?

A That I had to? No.

Q He suggested it maybe, right?

A That's correct.

Q Were you ever told you couldn't get an advancement or promotion if you didn't make a contribution?

A No.

Q Mr. Graber never told you that either, did he?

A No.

Q By the way, I think you told us about a 3 x 5 card?

A Yes.

Q That was only one year, right?

A Yes, it was.

Q Who gave you that card?

A Mr. Graber.

Q What did he say to you?

A He said -- I believe he said that this is for your information.

Q That's correct. This is for your information, right? Not that you had to kick in one per cent, right?

A No. He never said that.

Q Mr. Doheny, let me ask you this, sir. Was it pretty common knowledge among the Town employees that everybody would be making a contribution of roughly one percent of their annual salary to the Republican Party?

A That's correct.

Q And nobody ever told you, you had to do it, did they?

A No sir.

Q By the way, you were active in politics, were you not?

A For about one year.

Q And that was by termination also? You helped formulate the Point Lookout Republican Club?

A Yes sir. That's correct.

* * *

(Tr. p. 171)

Q Mrs. Powers, by whom are you employed?

A Town of Hempstead.

Q For what department or governmental agency do you work?

A Department of Conservation and Waterways.

Q For how long have you worked for the Department of Conservation and Waterways?

A Four years

* * *

(Tr. p. 172)

Q In the year 1972, the fall of 1972 -- this is approximately now three months after you began working there -- did you make a contribution to the Town of Hempstead Republican Finance Committee?

A Yes. In September.

Q Do you recall for how much money you made this contribution?

A Well, it was one percent of 4378.44.

Q When you say 4378, you're referring to $4,378?

A $4,378 even. And I would just -- I was told to round it off to the nearest dollar, which would be 44.

Q Who told you to round it off to the nearest dollar?

A Mr. Graber.

* * *

(Tr. p. 173)

Q Now, would you describe the circumstances, the circumstances surrounding your writing that check to the Town of Hempstead Republican Finance Committee?

A Well, this was September, Mr. Graber had approached me for a contribution, and being that I started in July, in September my salary as of that date was $4,378 even and one percent would be $43.78, rounded out to the nearest dollar, which was $44.

* * *

(Tr. p. 174)

Q And what did you do after you had prepared the check, Mrs. Powers, to whom did you give it?

A To Mr. Graber.

* * *

(Tr. p. 175)

Q Now I direct your attention to the following year, September, October of 1973, and ask you if you had occasion to make another contribution to the Town of Hempstead Republican Finance Committee?

A Yes.

* * *

(Tr. p. 176)

Q Can you explain the circumstances under which you made that check payable to the Town of Hempstead Republican Finance Committee?

A Well, it was September and it was about that time again to make a contribution to the Republican Party, and my salary that year was $9,238, and one percent was $92 even, and that is how I made the check payable.

Q To whom did you give the check?.

A Mr. Graber.

Q Do you recall the circumstances under which you gave him the check?

A Er -- I know it was a card that was given that year.

Q Now, you indicate a card.

Could you just basically describe this card for us, Mrs. Powers?

A It had my name on it and my salary for the year and my year and grade.

Q And who gave you the card?

A Mr. Graber.

* * *

(Tr. p. 177)

Q Did you ever ask Mr. Graber for the information that was contained on that card prior to receiving it?

Did you ever ask him for the card?

A No.

* * *

(Tr. 181)

Q Ma'am, you were interviewed for your job by Mr. Graber: Correct?

A Yes, sir.

Q And when you were interviewed, did he in any manner tell you that you had to make some kind of a contribution in order to get your job?

A No, no, sir.

* * *

(Tr. p. 182)

Q Were you ever told that you wouldn't be kept as a provisional if you didn't make your contributions?

A No.

* * *

(Tr. p. 183)

Q Well, I am not asking you what you interpreted it to mean, madam, I'm asking you what did he say to you?

A He just gave me the card, that is all.

Q That was all, right?

A Yes.

* * *

(Tr. pp. 183-184)

Q Now, did you receive solicitation from the Republican Finance Committee in the form of letters while you were an employee?

If you recall?

A No, no, I don't recall.

Q Do you remember the Floral Park Republican Club?

A Yes.

Q You didn't get any letters from them asking you for some dollars?

A Well, I got the envelope last year to make a contribution.

Q Did you?

A Yes.

Q Did Mr. Graber have anything to do with that?

A No.

* * *

(Tr. pp.185-186)

Q Did you contribute this year?

A '75?

Q Six.

A No.

Q Are you going to?

A I probably will. I --

Q Did anybody ever force you to make a contribution?

A No, no.

Q Did anybody ever tell you that you couldn't hold a position of status if you didn't make a contribution?

A No.

Q And I am including Mr. Graber in these questions, ma'am.

A Yes, sir.

Q Did anybody tell you that you would never get a raise or any overtime if you didn't make a contribution?

A No.

Q What I am getting at is, were these contributions coerced from you by Mr. Graber in any manner?

A No, sir.

* * *

(Tr. p. 187)

Q Right. Isn't it a fact, Mrs. Powers, that when you started to work for the Town that you heard from your fellow employees that it is customary to give one per cent of your salary as a contribution to the Party?

A Yes, after I received my position.

Q Yes.

A Yes, yes, that is right.

Q That is right. In other words, when you gals were sitting around and getting your work done or were occasionally at a coffee break, this was discussed; right?

A Right.

* * *

(Tr. p. 188)

Q Okay. Were you ever told what would happen to you if anything if you didn't make a contribution?

A No.

* * *

EXCERPTS OF TESTIMONY OF MR. GUNDERSON (Tr. pp. 189-206)
(pp. 169a-176a)

(Tr. p. 189)

Q Mr. Gunderson, by whom are you employed?

A The Town of Hempstead.

Q By what agency?

A Conservation and Waterways.

* * *

(Tr. p. 190)

Q I see. I direct your attention for a moment to the fall of 1970, about September or October of 1970, and ask you if you had an occasion to speak to Mr. Graber concerning overtime that the employees in your section were working.

A Yes. Something came up about overtime and I went over and talked to him.

Q When roughly was this, in the fall of 1970, do you recall?

A Yes, in the fall of 1970, I recall.

Q Okay. Can you tell us where you and Mr. Graber discussed this matter?

A Yes, in his office.

Q Where is that located?

A In the Administration Building.

Q Did you go to speak to Mr . Gunderson?

A Yes.

Q Would you tell us what the substance of that conversation was?

A Something came up about overtime and I went over and asked about it and he said, "Well, you tell the men if their one per cent isn't paid there would be no more overtime."

* * *

(Tr. p. 193)

2pm3

Q Now, prior to the fall of 1970, did you have conversations with Mr. Graber concerning the one percent?

A I have had a conversation, he would come and hand me cards or a group of papers with men's names and how much the earnings was, and he did that at that time of year, that was one percent, and I would bring the cards over to the fellows, "You know what it is, you do what you want."

Q In what years would Mr. Graber do this?

A As long as he has been there, as long as I know, I mean I can't say exactly what years.

Q Was this on a yearly basis, every year?

A Yes, sir, every year.

Q Do you know what time of the year this occurred?

A Late September, early October.

Q And could you describe what was on these lists?

A Yes, it was the employee's name and on one side his yearly salary.

Q And what if anything did you do with this information after you received it from Mr. Graber?

A I would bring it over to the fellows and lay it on their desk or in the boxes and say, "Here it is, fellows, you know what it is, I don't have to tell you, you do what you want."

* * *

(Tr. p. 195)

Q Directing our attention to these lists that you have indicated you received from Mr. Graber, did you ever ask Mr. Graber for these lists?

A No, sir.

* * *

(Tr. pp. 198 - 202)

By the way, do you remember when the United States Government sent out over a thousand questionnaires to Town employees?

A Yes, sir. I don't know the date.

Q No. I am not asking you the date, sir. But you recall receiving one of those questionnaires?

A Yes, sir.

Q And did you fill it out, sir?

A Yes, sir.

Q Now, I want to ask you this. Has Mr. Graber ever solicited political contributions from you?

A I don't understand the question.

Q Did he ever ask you to kick in to the Republican Party?

A No, sir.

Q Never?

A No, sir.

Q Did he ever tell you to tell other people to kick in?

A The only thing he ever told me was the one per cent was due. As far as kicking in to anybody else, never.

Q Now that -- how long have you been now with the Town of Hempstead?

A Approximately thirteen years, I believe. I am not sure.

Q That's okay. It's a substantial period of time, right?

A Yes, sir.

Q Now, when you get on the job, it was pretty well understood that everybody kicks in one per cent; right?

A That's correct.

Q Right?

A Yes, sir.

Q And I mean you learned that before you ever spoke to Mr. Graber about it; right?

A Mm-hmm.

Q By mm-hmm, I trust you mean yes?

A Yes.

Q Okay. You see, we have a problem. He has to take it down.

Okay. Anybody ever pressure you to kick in one per cent?

A Never.

Q When you got your job, were you ever told that if you didn't make political contributions you wouldn't get your job?

A No, sir.

Q Have you yourself ever been disciplined or lost any benefits for failure to make a contribution?

A No, sir.

Q Has any benefit or promotion ever been told to you that it was conditioned upon you making a political contribution?

A No, sir.

Q That's just what you told the U.S. attorney in your questionnaire; right?

A Yes, sir.

Q And it is true?

A Yes, sir.

Q When you got these cards, Mr. Graber never told you for what purpose they were, right?

A No. He told me that the one per cent was due. And we evidently were supposed to know what they were for.

Q Well, did he tell you that or did you just assume it?

A sir.

Q He just gave you the cards, right?

A He gave me the cards and he said, "It's one per cent time."

Q Right.

A That's right.

Q And you went out and solicited the one per cent?

A No, sir.

Q Well, what did you do with the cards?

A I gave the cards to the men whose names were on them.

Q What did you tell them?

A I told them, you know, this -- you know what this is. You do what you want.

Q Right. You didn't put any pressure on anybody, either, did you?

A No, sir.

Q Any of your men ever receive -- ever fail to receive overtime because they didn't contribute?

A I do not know that question.

Q In other words, it's one per cent time. You

can either kick in or forget it, right?

A Yes, sir.

Q You never pressured anybody?

A No, sir.

Q And Mr. Graber never pressured you?

A No, sir.

Q Or anybody else in the party?

A No, sir.

* * *

(Tr. p.204)

Q Would you indicate what if anything Mr. Graber said when he gave the cards or lists to you in those years that you received them?

A All he said was that here are the men's names. It's one per cent time. That's all he ever said.

* * *

(Tr. p. 205)

Q Where did you pick the cards up?

A Mr. Graber. Right off Mr. Graber's desk.

Q But you were assigned to where?

A Well, we were-- we were in the west marina, east marina. Our own building.

Q Well, did you get a call from Mr. Graber to come in?

A No.

Q You came in by yourself to pick up the cards, right?

A No, sir. I did not.

Q But he never asked you to come in to pick them up, did he?

A No, sir.

* * *

(Tr. pp. 205-206)

Q Perhaps you can explain how it came about that you picked up the cards or list.

A Yes. I was in the office sometimes two, three times a day. And when I come in, Mr. Graber would see me and say, "Eddie, can I talk to you?"

Well then, he'd hand me the cards and say, "Here's the one per cent time due. Here's the list."

Q In other words, you had business in there?

A Yes, sir.

* * *

EXCERPTS OF TESTIMONY OF MR. BABIAK (Tr. p. 206-220)
(pp. 177a-184a)

(Tr. p. 206)

Q Mr. Babiak, by whom are you employed?

A Town of Hempstead.

Q For whom do you work in the Town of Hempstead?

A Conservation, Waterways Department.

* * *

(Tr. p. 207 - 208)

Q During the course of the time that you have worked for the Department of Conservation and Waterways, have you contributed one per cent of your salary to the Town of Hempstead Republican Finance Committee?

A A couple of times. The first few years I was there and then I didn't. I didn't pay it any more.

Q I see. Now, directing your attention to November

of 1970, did you in November of 1970 pay one per cent of your salary to the Town of Hempstead Republican Finance Committee?

A I paid more than one per cent at that time.

Q Now, can you explain the circumstances under which you paid the one per cent that year?

A Well, we were -- there is a West Marina, as they call it. It was opening up at that time. And we were working a few hours overtime a week there. Two to four hours because they had no watchman. We were taking turns with the -- the eight to ten bay constables that we had. And I don't know how many weeks this went on exactly. And then one day Ed Gunderson come over and he said -- words to the effect that anybody that didn't pay their one per cent, no more overtime.

Q And did you pay your one per cent?

A Well, I went home that night and I talked it over with my wife. And I said, well, in plain English, we are making a few dollars here. I will pay the one per cent. So I think one per cent at that time came to about $90 or something like that. And I'd be a sport and give them $100. Made a check out for $100.

* * *

(Tr. p. 209

Q And you indicated you had a conversation with Mr. Graber in either '71 or '72; is that correct?

A That's correct.

Q And would you tell us where that conversation took place?

A In the hall of the -- at the bulletin board in the base office, the main office.

Q Is that where Mr. Graber works?

A That's where his office was.

* * *

(Tr. p. 210)

Q And would you describe the circumstances under which you -- or what you recall of the conversation that you had with Mr. Graber at this time?

A I was reading the board and Ray came around -- he'd come around a lot and say, "Hi, Gene," etc. He came around and he said -- he mentioned something about one per cent, the time for one per cent or words to that effect. Exactly what the words were, I don't know.

And I said, well, when I paid the one per cent -- I said I would give it to my committeeman.

And he said, "No, you can't give it to your committeeman. It's got to come to me."

Q Was anyone else present besides you and Mr.

Graber?

A No. Somebody could have been passing in the hall, but I don't recollect that.

Q Did you give your one per cent that year to Mr. Graber?

A No.

Q Did you give the one per cent?

A I don't think I ever gave it after that. After that $100 check that I gave.

* * *

(Tr. pp. 211 - 212)

Q Mr. Babiak, I would like you to take a look at what has been marked as Government Exhibit -- have you had an opportunity to look at the exhibit, Mr. Babiak?

A Yes.

Q Can you identify it?

A Yes. It's a card that Gunderson gave me at one time. Ed used to bring these cards over and pass them out to the various fellows and say -- I remember to me he'd say, "Gene, you know what this means."

Q Would you receive those cards every year?

A I don't know how many years. A couple of years.

Q What information would be on those cards? Perhaps you can describe to the Court and everyone in the courtroom --

A Well, it gives what your -- I think this forecasts what your earnings would be to the end of the year, so far as I can gather.

Q What information was on the card?

A On this card here --

Q Or on the cards that you can recall being given by Mr. Gunderson.

A What you would earn by the end of the year.

Q You mean your annual salary?

A Right.

Q Is there any other information on the card?

A Well, your grade or whatever is on there. Nothing else that I know of.

Q Is your name on it?

A Yes. Eugene Babiak, Grade 14, year 5 --

Q In those years that you worked for or under Mr. Gunderson, did you ever ask or request that Mr. Gunderson obtain this information who worked for the Department of Conservation and Waterways?

A No.

* * *

(Tr. pp.212 - 213)

Q Were you told -- excuse me. Were you told what the purpose of the cards was?

A Well, we knew what the cards were from other times, when Eddie would come and give us this card and say, "Here, Gene, you know what this is."

This would be Ed Gunderson.

MR. SUTTER: I move to strike it, if your Honor please.

THE COURT: Overruled, in the light of Mr. Gunderson's testimony.

Q To your knowledge, were those cards used to compute your one per cent contribution if you chose to give?

A Yes.

* * *

(Tr. p.216)

Q By the way, your wife made the political contribution, right?

A The checking account is in her name. That's correct.

* * *

(Tr. p. 217)

Q Were you ever told, sir, that -- well, did Mr. Graber ever tell you that if you didn't contribute, you wouldn't stay on the job?

3/2 A Never.

Q When you were interviewed, were you ever told that if you didn't make political contributions that you wouldn't get the job?

A No, sir.

Q Were you ever told that you wouldn't receive a promotion if you didn't make a contribution by Mr. Graber ?

A Not by Mr. Graber, no.

* * *

(Tr. pp. 218 - 219)

Q Gunderson asked you for it, right?

A He didn't ask for it. He didn't ask for it. He just came and said that the word came down. Where it came down from, I don't know. Those who didn't pay the one

per cent, no more overtime.

Q Well, this is what I am getting at. You don't know what if anything Ray Graber said concerning no overtime, right?

A To Ed Gunderson.

Q Yes.

A No, I wouldn't know because I wasn't there.

Q All you know is what Gunderson told you?

A Right. Right.

Q Right?

A Right.

* * *

(Tr. p. 220)

Q What I am getting at is, did Ray Graber, when you didn't make your one per cent contribution, say that you were in trouble?

A I told you before he never told me that.

Q Never threatened you, right?

A I mentioned that before. He never threatened me.

Q Never told you anything would happen to you if you didn't make it, right?

A Again, I told you before. You're repeating. I told you it never happened. Never threatened me.

* * *

EXCERPTS OF TESTIMONY OF MR. DUVELSDORF (Tr. pp. 223-239)
(pp. 185a-192a)

(Tr. p. 223)

Q Mr. Duvelsdorf, by whom are you employed?

A The Town of Hempstead.

Q And for whom do you work, what governmental agency?

A Conservation and Waterways.

* * *

(Tr. p.224-225)

Q Now, during the years 1971 through 1974, in all of those years, Mr. Duvelsdorf, have you made contributions to the Town of Hempstead Republican Finance Committee?

A I have.

Q AIn each of those years?

A Right.

Q And approximately how much have you contributed to the Town of Hempstead Republican Finance Committee?

A Well, it was approximately one percent of my salary each year.

* * *

(Tr. pp. 225 - 227)

Q Would you explain in your own words the circumstances under which you made those contributions or donations?

A Well, when I take paperwork over to the office because when Mr. Harrington was off I would have to take the paperwork over there --

Q He is another dock master?

A Yes.

When I went over, around that time, Mr. Graber would hand me a card. I don't recall whether it was a card or a slip of paper. It had my name on it, my salary and the one percent.

Q When you said that you went to the office, whose office are you referring to?

A To the main office of conservation where Mr. Graber was in that office, plus two or three women that worked in there.

Q Other than your name, what information or what other information was contained on that piece of paper or that card?

A My salary and one percent of what my salary was.

Q So there were two figures on each of these cards?

A Two figures, right.

Q From whom did you receive these cards?

A From Mr. Graber.

Q Now, did you ask for the information that was contained on the card, that is your name or the salary, your annual salary or what one percent of your annual salary was?

A No.

Q Did you ever request Mr. Graber in any year to give you that information?

A No.

Q After you received the cards in those years in 1971 through 1974, what did you do?

A Well, I would write out a check and bring the check in to Mr. Graber?

Q And you gave him the check in all of those years?

A Right.

Q And would the amounts of the money that you write out the check for correspond to the amount of the money that was contained on the piece of paper or the card?

A Approximately except for one years when I was a little financially strapped and I couldn't pay the full amount.

* * *

(Tr. p.228 - 229)

Q And what did you do with those checks?

A These are checks that I gave to Mr. Graber when I --

Q Did you personally give these checks to him?

A Yes, sir.

* * *

(Tr. pp. 324 - 325)

Q I'd like to show you Government's Exhibit 12 in evidence which I now place before you and ask you, sir, is that the type of card that you received?

A Yes, sir.

Q Okay.

Now, leave that in front of you, if you will, sir, and look at it at any time you want.

That card has no indication of one percent, does it?

A No, no, not on this one, no, sir.

Q That is the type of card that you received?

A As far as I said, as far as I can recall, I didn't -- I mean not -- that is what I said, as far as I can

recall it had the three figures on it.

Q Mr. Duvelsdorf, all I'm getting at is that is your recollection?

A Right.

Q Right?

A Right.

* * *

(Tr. pp. 235 - 236)

Q Okay, fine.

Now would you agree with me that that exhibit does not have a one percent figure?

A Not on this one, no, sir.

Q Okay.

Now, do you know who prepared these cards?

A No, I don't.

Q Do you recall who gave them to you?

A I know who gave me mine, yes, sir.

Q Who was that, sir?

A Mr. Graber.

Q Right.

Did he say anything to you?

A No, he just handed me the cards.

Q You see that is what I am trying to get at, he never said to you, "You have got to kick in one percent," did he?

A Oh, no, sir, no.

* * *

(Tr. pp. 236 - 237)

Q And Judge O'Shaughnessy never told you that you had to make a contribution to get the job, did he?

A No, sir.

Q Did Mr. Graber ever tell you that?

A No, sir.

Q Did anybody at any time tell you that if you didn't make political contributions to the Republican Party that you would lose your job?

A No, sir.

Q Did anybody at any time tell you that if you didn't make political contributions you couldn't get a promotion?

A No, sir.

Q Did anybody at any time ever tell you that if you didn't make political contributions you wouldn't receive overtime?

A No, sir.

Q And when I say did anybody, I am including Mr. Graber, you understood that, sir?

A Yes, sir.

Q And he never said that to you?

A No, sir.

Q He never discussed one percent with you, did he?

A No.

Q By the way, I assume, sir, that you believe in the Republican Party: Correct?

A Definitely, yes, sir.

* * *

(Tr. pp. 238 - 239)

Q Okay.

Am I safe in asking you this, sir:

When you first heard about one percent, that was from fellow employees: Right?

A No, I wouldn't say from fellow employees, I -- before I even worked for the Town it was common knowledge that,

you know, they --

Q They expected?

A They looked for one percent.

Q Right.

What I am getting at is, Mr. Graber never told you one percent?

A No, sir.

Q No pay or perish from Mr. Graber: Right?

A Right, no, I was never harassed or threatened or anything by Mr. Graber or anybody else in the town.

Q It was just understood?

A That is right.

Q Correct?

A That is right.

Q The fellows would chat over sandwiches and a cup of coffee in the lunch hour and you learned it that way?

A No, well, I knew it before I worked at the Town, you heard it at the Republican Club meetings.

Q That is what I am driving at, sir?

A Right, sir.

* * *

EXCERPTS OF TESTIMONY OF MR. PARKER (Tr. pp. 244-277)
(pp. 193a-204a)

(Tr.p.244)

Q Mr. Parker, can you tell us what you do for a living?

A I am retired.

Q Before retirement, what occupation did you have?

A I was a Dock Master of the Town of Hempstead, the marina at Point Lookout for twelve years.

Q And what years were they?

A From '61 to '74.

* * *

(Tr.p.246)

Q Would you explain what your contacts with Mr. Graber were in those years?

A I would normally go to the office every day to pick up mail and to find materials that have been ordered for me and to request materials. And whenever the IBM sheet was received, why, Mr. Graber would tell me that I've got the one percent listing now. He'd either go over it with me, and we'd make out a listing of the boys that were working for me, or I would make it out myself from this -- the sheet.

* * *

(Tr. pp. 247 - 248)

Q Mr. Parker, I am just trying to indicate what conversation you had specifically with Mr. Graber?

A Mr. Graber.

Q Yes.

A Well, I would get the listing, take it back and hand it out to each one of my employees that were working for me, and tell them that they had -- they were expected to contribute one percent of their gross to the town.

Q Now, where did you get this listing from? Who gave you the listing?

A Mr. Graber.

Q Can you describe what this list looked like?

A Looked like an IBM reproduction.

Q What information was contained upon the list?

A Just showed the individual's name and the gross pay that he had received for the past year.

Q Did you ever request this information? That is, your -- was your name on it?

A My name was on it.

Q Were the names of your other employees who worked under you on that list?

A Every one that worked under me was on it.

Q For every year?

A For every year, sir.

Q Now, did you or any other of your employees, to your knowledge, ever request Mr. Graber for this information? That is, their name and their annual salary?

A Never.

Q Now, to your -- according to your recollection, what exactly did Mr. Graber say to you when he gave youtthese lists every year?

A Oh, just that he had received the one percent listing and that I was to get it to the boys who were working for me.

Q I see. Now, after you received these lists or listing, as you indicated, what did you do with the list?

A I would go back to my office, write down on different slips the boys' name and how much it was -- that he was expected to -- rather, I would show him the gross. And he was expected to contribute one percent of that to the Town.

* * *

(Tr. p. 250)

Q Now, you indicated that you received information from Mr. Graber that some individuals were delinquent. Were you told to do anything after you received the names?

A Nothing more than mention to the people that their check had not been turned in.

* * *

(Tr. pp. 252 - 253)

Q Let me ask you this, sir: When you picked up the sheets -- okay -- would I be fair in saying that they were similar to an IBM print-out?

A Similar.

Q You know what I mean by that, sir?

A Yes, I do. I used to run the tabulations unit at the receiving station, Brooklyn, for four years.

Q Okay. Fine. Were they similar to that?

A Similar.

Q Obviously done by a computer?

A Done by some type of machine.

Q When you received it from Mr. Graber, did he put down the one percent figure?

A Not to my knowledge.

Q That was added by somebody else?

A There was no one percent put on them.

Q Just what their gross --

A Just what their gross annual takehome was. That was all that was shown.

* * *

5/2

(Tr. p. 256)

Q Now, in early 1962, because of your Naval experience and your familiarity with the sea and boats, you were advised that there was a position available as a dock master, correct?

A Yes.

Q And when you went to make application for that position, you did it through your local Republican Committeeman; right?

A I did. In Garden City.

* * *

(Tr. p. 258)

Q By the way, it was you who wrote down the one per cent figure on those printout sheets; right?

A Right. I never received cards or anything like that. It was always on a piece of paper.

Q You see, that's what I am getting at. You didn't receive -- you know what I mean by the three-by-five index cards, sir?

A Never.

Q Never received any of those?

A They must have come into being after I was retired.

Q When did you retire?

A June 1, 1974.

Q Prior to that younever saw any such cards?

A No, sir.

* * *

(Tr. pp. 259 - 260)

Q When did you first hear about this one per cent contribution?

A I think it was in the fall of 1961. No, '62.

Q That was prior to your --

A Wait a minute. Fall of '63, after I had -- I was working for Parks and it was either George Hatch or Pete Berdone who was the director of the Parks at that time. Hatch was the bookkeeper or timekeeper.

Q Timekeeper, right.

A And Berdone was the boss.

Q They mentioned it to you?

A Yes. I was kind of hostile at first. They said, well, it's customary to contribute. So I did. And I continued to do it the rest of the time I was employed.

Q So you never heard initially about the one per cent from Mr. Graber, did you, sir?

A No, sir.

* * *

(Tr. p. 261)

Q And did you tell the FBI that not all gave one per cent, that it depends on their financial condition?

A Yes, sir.

Q That is true, is that right?

A Right.

* * *

(Tr. pp. 262 - 263)

Q Right. Did he ever tell you, after he promoted you from a low echelon to a high echelon position, that if you didn't kick in your one per cent, mister, you were going to lose your job?

A He never said that to me.

Q Did he ever tell you that if you didn't contribute your one per cent, he wouldn't promote you up to Grade 18 and subsequently to 19?

A He never mentioned it to me.

Q Just one thing I would like to do. These checks that you would turn over to Mr. Graber, none of those checks were drawn to the order of Mr. Graber, were they?

A Never.

Q All drawn to the order of whom, sir?

A It was -- I think it was the Finance Committee of the Republican Club of Nassau. Something like that.

Q Town of Hempstead?

A Either that or the Nassau Republican Club.

Q Can I try and help you out and refresh your recollection? Town of Hempstead Republican Finance Committee?

A Something like that.

* * *

(Tr. pp. 268 - 269)

Q By the way, when you were with the Parks Department-- okay, before it was taken over by this agency, did you solicit political contributions at that time?

A I did. All the boys that were working for me.

Q So this was something that went on prior to the time of your meeting with Mr. Graber, right?

A A I was handed a list and I pass it around to my employees.

Q But not by Mr. Graber?

A Well, he wasn't around. I didn't know him.

Q That's what I'm getting at, sir.

MR. SUTTER: Thank you, sir. I have no further questions.

* * *

(Tr. p. 270)

Q We will take the listing, '68 through '73. You indicated you receive these computer print-outs and that they have the name of yourself as well as other employees, and that the computer print-out also contained information concerning your annual salary.

First of all, to your knowledge, did this include overtime for those years?

A It included overtime.

Q Secondly, who first showed you those computer print-outs?

A Mr. Graber showed me the print-outs that he had received from Town Hall. And I would make a list up from that or he would help me make the list.

Q When you say he would help you make up the list, what did you mean when you said -- what would he do?

A He would call off the names and I would write them down. Or he would have it written down for me.

Q And in some cases he would call off the names of the -- the annual salary --

A A Of the ones that worked for me and I would write down their gross for the past year.

* * *

Q You indicated you received this information from Mr. Graber. Now, what if anything -- what conversations did you have with Mr. Graber when you were provided this information?

A Get the word to the boys, the one percent is due.

Q And that was told to you every year; is that correct?

A Every year that the listing came in.

Q And based upon that, the conversation with Mr. Graber, each and every year what did you do, Mr. Parker?

A I gave each one of the boys a listing of what their gross was for the past year and I told them the one percent was expected.

Q And, therefore, as I understand your testimony, you did not go out and tell these men that the one percent was expected on your own? You didn't take it under your own initiative?

A Never at any time.

Q Did you ever collect a check?

A Once in a while.

Q Under what circumstances?

A The boys had come to work and he'd say, "I've got my check here. You want to take it over?"

And when I went over to the office I would take the check with me.

Q When you went over to the office, what would you do with the check?

A Turn it over to Mr. Graber along with my own.

(Tr. p. 273)

Q You knew all about the one percent long before you met Graber, right?

A Yes. I paid it.

Q And you solicited it before, right?

A To the boys that were working for me.

Q That's what I mean. In the Department of Parks, right?

A I did.

* * *

(Tr. pp. 276 - 277)

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6pm

Q These sheets that you had were really the Comptroller's run-out of the payroll: Right?

A I never had sheets that were run-outs, what I received was handwritten listings of men that worked for me and their gross pay for the past year. They were taken from this print-out from the Town Hall.

Q And Mr. Graber never put a one percent figure on those, did he?

A Not to my knowledge, he merely told me that this was the one percent of their gross which was expected to be turned in.

Q Well, you knew that before you ever talked to Graber, right, that if you worked for the Town you put in one percent as a political contribution: Right?

A I found it out.

Q Well, Hatch told you: Right?

A Yes, sir.

Q And you knew about it in the Department of Parks; right?

A I did all the time I was working for Parks.

Q And you probably heard it around the local Republican Club after thirty years of membership?

A I heard it.

Q Okay.

You were never threatened, were you, that if you didn't contribute something bad would happen?

A Nobody ever threatened me.

* * *

EXCERPTS OF TESTIMONY OF MRS. CARLEY (Tr. pp. 283-309)
(Tr. p. 283) (pp. 205a-218a)

Q Now, when, if you recall, did you work for the Department of Conservation and Waterways?

A I started in February 1971 and I left in April of '74.

* * *

(Tr. pp. 283 - 284)

Q April '74.

Now during those years that you worked as Mr. Graber's secretary and was employed by the Department of Conservation and Waterways, did you make a contribution or a donation to the Town of Hempstead Republican Party Finance Committee?

A Yes, I did.

Q And approximately how much did that total?

A For the three years?

Q In terms of your annual salary, approximately.

A Oh, one percent of my salary.

Q Now I would like to -- let me ask you this: Did you pay by check?

A Yes.

Q Do you recall about what time of year you made those contributions or donations?

A It would have been September or October.

Q And do you recall to whom you gave those checks?

A To Mr. Graber.

* * *

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(Tr. p. 285)

Q And can you describe the circumstances or how it came about that you first made your first contribution to the Town of Hempstead Republican Finance Committee?

A I guess in around September of that year my co-employees started talking about it being one percent time --

MR. SUTTER: Excuse me.

Objection, I object to what she guesses, your honor. If she wants to testify to her best recollection I have no objection.

THE COURT: Do you understand the difference?

THE WITNESS: Yes, all right. I am sorry.

A To my best recollection around maybe August or September in that year my co-employees started mentioning that it was one percent time and I asked them whatit meant and they said that we were almost obligated to contribute one percent of our salary to the Republican Club of the Town of Hempstead.

* * *

Q What do you recall the conversation was concerning that contribution?

A To the best -- the best I recall is that I would only have to pay the one percent on the salary I had made up to the time I made the contribution.

Q And did you have that conversation with Mr. Graber?

A Yes, sir.

Q Do you recall anything else, were there any other parts of the conversation that you had with Mr. Graber?

A No, not really.

Q Now, did you go to him for that information or did he come to you, if you recall?

A I believe I went to him and asked him how much I would have to contribute that year; since I wasn't there a full year, I didn't know if I had to make a contribution on my annual salary or what I had earned up to that point.

Q What was Mr. Graber's response?

A That I should only pay up to what I had earned.

Q And do you recall how it came about that you gave $54, that particular amount of money?

A Well, I must have earned approximately $5,400 up to that point.

* * *

Now, directing your attention to another year, 1973, I will ask you if you had an occasion to perform in your capacity as Mr. Graber's secretary the preparation of lists that were given to supervisors concerning the one percent?

A Yes, I had.

Q And can you describe in your own words what you did in the fall of 1973?

A Well I got -- Mr. Graber gave me the computer sheet that had the names of everyone in our department --

Q Is that all of the employees?

A Every employee in the Conservation Department.

Q What do these computer print-out sheets look like, if you recall?

A They were largely like IBM sheets, green and white, I guess, or dark green and light green --

Q Do you recall --

A -- and they had columns in them with the employees' names, their grade, their titles, and their annual salary and overtime.

Q And what if anything did Mr. Graber do when he gave you these computer print-outs?

A Well, he asked me to figure out the one percent for everyone in the department.

* * *

(Tr. p. 288)

Q What did you do after, and I gather you took the annual salary and added overtime and computed one percent of that amount; what did you do with that computation? What if anything were you asked to do about that?

A Well, I made on just plain paper lists for each division head, like for the lab and for the Bay constable at the marina --

Q That would be for the various sections?

A The various sections in the department.

Q Who told you to do that, incidentally, to prepare these lists, the separate lists?

A I believe Mr. Graber did.

* * *

(Tr. p. 290)

Q To your knowledge were you called or was Mr. Graber called by the supervisors for the information that was contained on those lists?

A Not to my knowledge. I never received any calls requesting amounts.

* * *

(Tr. p. 293)

Q Okay. Now I just want to clarify a couple of things, if I may with you, Mrs. Carley. It was not Mr. Graber who first told you about this one percent contribution, was it?

A No.

Q You had heard that from fellow employees; isn't that correct, ma'am?

A That is right.

* * *

(Tr. pp. 293 - 294)

Q Was it generally understood among the employees that they would contribute one percent of their annual salary to the Republican Finance Committee?

A That was the impression I got.

Q Now, when it came time in your first year of employment, which I believe, if my notes are correct, was 1971 --

A Right.

Q -- you went to Mr. Graber; correct?

A To the best of my recollection, I asked him how much I would have to contribute.

Q Right. He didn't come to you and tell you what you had to contribute, you went to him and asked him; right?

A That is right.

* * *

(Tr. pp. 295 - 297)

Q Mrs. Carley, I show you Defendant's Exhibit E for identification. Is that the type of computer printout sheet that you work from, or worked from in 1973?

A Yes, sir.

Q Okay. And you would receive that from whom?

A Mr. Graber gave me the lists.

Q And do you know who prepared those computer printout sheets?

A I believe they are done up in the comptroller's office in Hempstead.

Q The Town of Hempstead's Comptroller's Office; right?

A I believe so.

Q Right. And they are sent in to each department or -- withdrawn.

They were sent in at least to the Conservation and Waterways; right?

A As far as I know, yes, sir.

Q Right. And on there is indicated the gross salary?

A Right.

Q Of each employee?

A That is right.

Q The amount of overtime that was earned?

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A Yes.

Q Correct?

A Yes, sir.

Q Total gross salary?

A No, it doesn't have the total gross, it just has the annual salary and the overtime.

Q All right. Now, what did you do with those sheets?

A Well, all I did was go down the lists and where necessary added the overtime to the annual salary and computed the one percent.

Q And would you physically put on that list the one percent?

A No.

* * *

(Tr. pp. 298 - 299)

Q It is a small town out here.

May I ask you this, ma'am: Did there come a time when you were interviewed for your prospective employment with the Town of Hempstead?

A Yes, sir.

Q Did anybody tell you that you had to make a political contribution in order to get that job?

A No, sir.

Q Were you ever told during your employment that if you didn't make a contribution that you would be fired?

A No, sir.

Q Were you ever told during your employment that

if you didn't make a political contribution you would not receive advancements?

A No, sir.

Q As a matter of fact Mr. Graber continued your employment after you had some difficulty with the Civil Service examination; right?

A That's right.

Q Do you know what I mean by the expression, "put the arm on you"?

A Yes.

Q Was the arm ever put on you to enforce you to make a political contribution?

* * *

(Tr. p. 300)

Q Did Mr. Graber ever tell you that you had to make your contribution?

A No, sir.

Q Now, I think you were asked on direct examination, that is when Mr. Caden was talking to you, ma'am, whether or not any of the supervisors called Mr. Graber concerning the lists for their sections.

A I wouldn't know if they called him.

Q That is what I am getting at, you wouldn't know whether or not they called Mr. Graber; right?

A No.

* * *

(Tr. pp. 301 - 302)

Q Is it not a fact that many employees would come in to see Mr. Graber, inquiring as to what one percent of their salary was?

A That I don't know for sure; many came in with their checks and most of them had the amount in on the check. They would bring checks or money orders and they would have the amount in and many times they asked me to fill in the payee for them.

Q Fine. The point I am getting at is, it wasn't Mr. Graber who was going out to see them; they were coming in to see him?

A The few that came in, yes, came in to see him.

Q Fine. As a secretary, you know pretty much what your boss is doing, so to speak; right?

A In most cases, yes.

Q Okay. Did you ever see Mr. Graber go out and solicit an employee?

A No, sir.

Q Were you ever told to go out and solicit employees?

A No, sir.

Q And you never did; correct?

A No, I never did.

* * *

(Tr. pp. 302 - 303)

Q But I mean you were never threatened or coerced; right?

A No, I said I was never threatened or coerced.

Q You just thought it was the right thing to do because your fellow employees told you?

A Er -- because it was the generally accepted rule of the Town of Hempstead that you paid your one percent, not because my co-employees told me.

Q Well, Mr. Graber never told you to do that, did he?

A No.

* * *

(Tr. p. 303)

Q Did you type up any index cards, a three-by-five index card?

A No, sir.

* * *

ek/ss

(Tr. pp. 304 - 305).

Q Ma'am, I show you Government's Exhibit 12 in evidence.

Are you familiar with that type of card?

A Yes, sir.

Q Okay.

Now, are you familiar or have you ever typed up any such cards like that?

A No, sir, I never did.

Q You were just giving these lists to supervisors: Correct?

A Yes, I -- I -- I remember only giving one supervisor.

Q And that was whom?

A Mrs. King, Joan King.

Q Is that the facility that you had down in Island Par ?

A No, this was right in our office, the lab in the back of our office.

Q And you gave a list: Correct?

A That is right.

Q Did she ask you for it?

A No, sir.

Q You just gave it to her?

A Yes, sir.

Q Did any supervisor ever ask you for any of those lists?

A No, sir.

Q Did you give them to any supervisors, other than King?

A I'm not positive.

* * *

(Tr. p. 307)

Q Mr. Sutter asked you about the card which is in front of you and he asked you if you were familiar with the card. And I don't believe he asked you how did you become familiar with it?

A I have never been familiar with these. They must have been done after I left the Conservation Department.

* * *

(Tr. p. 308)

Q These lists or sheets that you have described for us, you gave them to Mr. Graber? You don't really know what he did with them, do you?

A No, sir, I don't.

Q And you never saw him solicit any employee for any contribution?

A Not in my presence. He never did, sir.

* * *

(Tr. pp. 308 - 309)

Q In the physical layout of the office, ma'am, I assume Mr. Graber had an office that was a private office?

A No sir. No private office.

Q And your desk was in the same room as his?

A Yes sir.

Q Isn't that correct?

A Yes sir.

Q You were able to observe each other during the day?

A Yes sir.

Q During working hours, anyway.

A Yes sir.

Q Right?

A Yes.

* * *

EXCERPTS OF TESTIMONY OF MR. LAGOMARSINO (Tr. pp. 309-328)
(pp. 219a-228a)

(Tr. p. 309)

Q Mr. Lagomarsino, by whom are you employed?

A Conservation Department, Town of Hempstead.

* * *

(Tr. p. 311)

Q I would like to direct your attention, if I may, to the fall of 1970. Approximately September or October of that year. And ask you if you had occasion to speak to Mr. Graber about an employee who worked for you or under you by the name of John Ackerman?

A Yes, I did.

Q Would you please relate the conversation? Do you know where this conversation took place?

A In my office at Freeport.

Q Did Mr. Graber come to your office?

A No. It was a telephone call.

Q I see. Will you please tell us what that phone call was about?

A I got a call from Mr. Graber.

* * *

(Tr. p. 312 - 313)

Q Now, would you please tell us what you and Mr. Graber discussed concerning Mr. Ackerman?

A Mr. Graber called me and notified me that Mr. Ackerman didn't pay his -- or contribute his one percent, and he was to be terminated on the overtime program we had.

Q Do you recall exactly what year this occurred?

A Not exactly. '70 or '71.

* * *

(Tr. p. 313)

Q I see. Now, what if anything did you say to Mr. Graber when he told you that Mr. Ackerman's overtime was to be terminated because he didn't pay his one percent?

A Well, I just listened and carried out his instructions.

Q What if anything -- what did you do when you say you carried out his instructions?

A I notified the man of the conversation. He was knocked off overtime.

* * *

(Tr. pp. 315 - 317)

Q Now, during those -- from the year 1968, have you had occasions to speak to Mr. Graber in the fall of each of those years, meaning from '68, about the employees' contribution of one percent of their salary?

A Yes.

Q Do you generally -- or just indicate to us what those conversations were like?

A Well --

Q What Mr. Graber generally said and what you did?

A I would get a call telling me this was that time of year.

Q Who would call you?

A Mr. Graber. He would say that time of year. And he would be sending down a list. Or give me a list over the telephone.

Q What information would you receive either on this list or over the telephone?

A The salaries, annual salaries of the personnel.

Q Would you receive their names?

A Yes sir.

Q What if anything did Mr. Graber ask you to do when he gave you that information either telephonically or by list?

A To notify the people on the list.

Q Did you notify -- notify them of what?

A That it was that time of year and their salary.

Q The time of year was the time to make a contribution?

A Yes.

Q What did you do?

A I carried out those instructions.

Q Tell us what you did?

A I notified the people in our section that it was that time and there was -- you know, we have the list.

Q What did you do with the information concerning their annual salary? Did you give them that information?

A Yes. Some people, I would give that information to.

Q Did you -- when you received these lists, did you know what the purpose of this list was?

A Yes.

Q What was the purpose of the list?

A The contributions.

* * *

(Tr. pp. 318 - 320)

Q I see. Now, subsequent to receiving this list or did -- did you ever in those years speak with Mr. Graber

again concerning employees who failed to make contributions?

A Yes. I did receive phone calls from those employees who haven't made their contributions.

Q Who would call you?

A Deputy Commissioner Graber.

Q What would be the substance of those calls?

A He would tell me that certain persons hadn't made his donation and to find out why they didn't.

Q What if anything did you do as a result of those conversations?

A Well, I told Deputy Commissioner that I notified them once. Then I thought it was sufficient on my part.

Q During those years, from 1968 through 1974, how often would you give -- would you get those follow-up calls after you initially received the list?

A Whenever there was a delinquent employee.

Q Mr. Lagomarsino, since 1967 have you made contributions to the Town of Hempstead Republican Finance Committee?

A Yes, I have.

Q During what time of the year did you make those contributions?

A In the fall of the year.

Q Approximately how much money?

A Approximately one percent of my salary.

Q Did you make those payments by check or in cash?

A By check, sir.

Q What would you do with the checks? Just how would you --

A I would sent them to Mr. Graber.

* * *

(Tr. p. 322 - 333)

Q Did any of your employees, to your knowledge, ever come to you and request information concerning their name and their annual salary and for you to obtain it from Mr. Graber?

A Yes.

Q On how many occasions?

A Well, just '75, last year.

Q Apart from '75?

A No, sir.

Q Mr. Graber didn't have anything to do with the -- collecting any one percent checks for last year, did he? For '75?

A No.

Q To your knowledge, MR. Lagomarsino, did any of the men ever indicate to you a reluctance to contribute one percent of their salary to the Republican Finance Committee?

A Some of them.

Q When they expressed such a reluctance,what did you tell them?

A I didn't really tell them much. That was their business I felt.

* * *

(Tr. p. 324)

Q By the way, when that one check was in the wastepaper basket -- right -- it was you who asked Mr. Graber whether or not he received your check?

A Yes, sir.

* * *

(Tr. p. 325)

Q But Ackerman was receiving overtime; right?

A Yes, sir.

* * *

Q Who bought Commissioner Udell's house?

MR. CADEN: Objection to the relevancy of who --

MR. SUTTER: I will tie it up, your Honor.

THE COURT: Overruled.

A I don't know, sir.

Q Ackerman bought it, didn't he?

A Pardon me, sir. I thought you meant the house he presently lives in.

Q No. The one he sold to Ackerman; right?

A Yes, sir.

Q And if you have trouble making a mortgage payment, ifthe Commissioner says, "Put him on overtime," then things aren't too bad for the Commissioner, are they?

MR. CADEN: I object to the argument. I object to the --

THE COURT: I think so.

MR. SUTTER: I think he's correct, your Honor, and I was incorrect.

Q But, in any event, after Ackerman bought Udell's house, Udell now tells you to put him back on overtime; right?

A Yes, sir.

Q As a matter of fact, after he bought the Commissioner's house, he got a heck of a lot of overtime, didn't he?

A There was never a lot of overtime in our department.

Q Well, he received as much as anybody else; isn't that correct?

A That's correct, sir.

Q And you and the Commissioner are good friends, right?

A I like to think so.

Q And yourdad was placed in the department by Commissioner Udell; right?

A Yes, sir.

* * *

(Tr. pp. 327 - 328)

Q Good.

When you got into the Town employ, did Ray Graber ever tell you you had to contribute one percent?

A No, sir.

Q Did he ever tell you there would be any dire consequences if you didn't contribute one percent?

A No, sir.

Q It's true, is it not, Mr. Lagomarsino, that you learned this from other employees, that this was customary?

A Yes, sir.

Q Right. And as a loyal Republican and as an employee, you made these contributions voluntarily; correct?

A Yes, sir.

Q And employees would ask you what their annual salary was on occasions; right?

A Oh, just about one occasion I can recall.

Q But you were the one who solicited the contributions from your fellow workers; correct?

A I don't think so.

Q Well, didn't you tell us that you would get the listing down and tell them?

A I would tell them the same thing that was told to me. It was that time of the year. And if they had to know what their annual salary --

Q What I am getting at, in your presence did you ever see Mr. Graber actively solicit any employee for a contribution?

A No, sir, I did not.

* * *

EXCERPTS OF TESTIMONY OF MR. AIELLO (Tr. pp. 329-338)
(pp. 229a-233a)

(Tr. p. 329)

Q Mr. Aiello, by whom are you employed?

A I am employed by the Town of Hempstead, Conservation and Waterways Department.

* * *

(Tr. pp. 331 - 332)

Q Now, directing your attention to the fall of each of those years, September-October of '70 through '73, did you have a conversation with Mr. Graber concerning employees' contributing one percent of their salary to the Town of Hempstead Republican Finance Committee?

A Yes.

Q Will you explain the substance of those conversations in each of those years?

A Well, the substance was Mr. Graber would ask me if I would please ask those people who were directly under me, if I would ask them that if any contributions were forthcoming, would they please make them at this time.

Q Now, what did you do as the result of the conversation that you had with Mr. Graber?

A I relayed the message.

Q To all of the persons who were under you?

A Yes, sir.

Q And did this occur in all of the years?

A Yes, sir.

Q Were you ever provided any information either orally or in writing concerning the employees' annual salary?

A No, sir.

Q And during the period of time that you worked for the -- well, let me ask you one other question.

In any of those years, '70 through '73, would Mr. Graber call you back and ask you why a particular individual had not made his particular donation?

A I don't recall getting such a call.

* * *

Q Very good.

Now, these contributions that you had made were to the Republican Finance Committee of the Town of Hempstead: Correct?

A Yes, sir.

Q Did Mr. Graber tell you that you have to make those contributions?

A No, sir.

Q It is true, is it not, sir, that a short time after you were engaged by the Town of Hempstead you learned from fellow employees that one percent was a common contribution to the Republican Party?

A That is right.

Q And when Mr. Graber would talk to you, he would say, "Gino, if anybody wants to make a contribution would you please tell him it's that time of year to do it;" right?

A Not exactly, I wouldn't say -- I wouldn't say that is exactly right, sir.

Q Well, what I am getting at is did he ever tell you to put the arm on anybody to get a contribution?

A No, absolutely not, no.

Q To pressure anybody?

A Absolutely not.

Q And were you ever pressured, sir?

A. Absolutely not.

Q Were you ever told you wouldn't get the job if you didn't contribute?

A No, sir.

Q Were you ever told that you wouldn't get advancements if you didn't contribute?

A No, sir.

* * *

(Tr. p.336)

Q In the number of years that you have been with the Town of Hempstead, do you have any knowledge of any Town employee in any manner being discriminated against because he failed to contribute to the Town of Hempstead Republican Finance Committee?

A By "any knowledge," do you mean hearsay?

Q No, direct knowledge.

A No.

Q Did anybody in your department ever have that happen to them?

A No, sir.

* * *

(Tr. pp. 337 - 338)

Q Do you want to finish a part of that answer?

A He would ask me would I ask these particular people under me, under my direct supervision, what I call my direct supervision, these three people, that if they wish to make a donation now is the time to make the donation.

Q If they wished to make a donation: Right?

A I would say that is accurate.

Q Sir, in all of your contacts with Mr. Graber, did you ever have occasion to see him solicit a political contribution from an employee?

A I don't recall.

* * *

(Tr. p. 336)

Q Did Mr. Graber ever solicit you for the one percent contribution?

A He personally, no.

* * *

EXCERPTS OF TESTIMONY OF MR. HARRINCTON (Tr. pp. 340-355)
(pp. 234a-245a)

(Tr. p. 340)

Q Mr. Harrington, by whom are you employed?

A Town of Hempstead, Conservation Department.

Q And how long have you been employed by the Department of Conservation and Waterways?

A Since 1966.

Q And has that been continuously up until today?

A Yes.

* * *

(Tr. pp. 341 - 342)

Q Now, directing your attention let's say at least to those dates that you were Dock Master and supervisor and let us confine ourselves to the years 1970 through 1974, directing your attention to the fall of each of those years did you have an occasion to meet Mr. Graber in his office concerning employee contributions?

A Yes.

Q And was this every year from '70 through '74?

A I believe it would have been about '71.

Q All right. And would you explain what occurred in those years, '71 through '74?

A Well, it, you know, like -- it's time to contribute, similar to that.

Q And he would say this to you?

A Yes, sir.

Q And did you know what he meant by those words?

A Oh, yes.

Q And did you know what he was referring to?

A Yes.

Q What did you understand him to refer to?

A Well, he wanted donations to the Party.

Q And other than speaking to you, did he also ask you anything or ask you to do anything with regard to people who were under you as dockmaster people who were working under you?

A Yes, he wanted me to tell them the same thing, that it was time.

Q In the years 1971 through 1974, did this occur every year?

A Yes, sir.

* * *

(Tr. pp. 343 - 344)

Q Directing your attention then to the list you indicated, in how many years would you receive a list that you can recall?

A Actually it was not a list.

Q Well, explain in your own words, Mr. Harrington.

A It was a small card and. --

Q Index cards?

A I believe it was three years, I think it would have been probably '72, '73, and '74.

Q And --

A And I think it was in the middle year, in the middle year.

Q Let's stay, then, with those years: '72 through '74. Who gave you the cards?

A Mr. Graber.

Q And in those years when he gave you the cards, in essence, what did he tell you when he gave you the cards?

A He asked me to give them out to the employees in the marina.

Q What was the information in '72 and '74, what was the information?

A In those two years --

Q '72 and '74.

A I believe it just had the salary on it, there was nothing else on it other than the man's name.

Q The employee's name?

A Right.

Q And the salary?

A Yes.

Q And this would be annual salary?

A Yes.

* * *

(Tr. p. 345)

Q Now, with regard to the card that you indicated was 1973, can you tell me what was contained on those cards?

A That card, I am positive, was a little different, that had the one percent written out on it.

Q Can you tell us what was on the card?

A It had the man's name, his salary, and then the one percent of the salary was written over on the other side.

* * *

(Tr. p. 346)

Q Now, after you received these lists or these cards from Mr Graber in those years that you have indicated, 1972 through 1974, did you ever receive a call in any of those years after that from Mr. Graber concerning people who may have not given their one percent or made a contribution?

A I believe I did, once.

Q Can you recall when?

A It was more or less, you know, the fellow was a little bit late --

Q Uh-hum?

A And you know, speak to him, and I would send him over to Graber.

Q Now, who called you and asked you to speak to the employee?

A It was Ray.

Q Mr. Graber?

A Mr. Graber, excuse me.

* * *

(Tr. p. 347)

Q Tell us the conversation.

A Well, the exact actually I wouldn't remember, but what he wanted was to know, you know, was the man going to donate, if he was just being late with the donation.

Q What did he ask you to do?

A Well, just to speak to him, find out more or less whether he was late or whether he was not going to donate anything.

Q And did you?

A No, I just told him to go and see Ray.

Q During the period that you were supervisor, did any men ever come to you and indicate to you that they preferred not making contributions or donations, for financial reasons or otherwise?

A I think, I believe there was two occasions when the men said, you know, they were a little bit short for one reason or another, and didn't have the full one percent.

Q And what would you tell them to do if they came to you?

A Well, see Ray.

Q Do you know what happened after that?

A Actually, no.

* * *

(Tr. p. 350)

Q In 1966, you made a political contribution of approximately one percent?

A Yes, sir.

Q Right. And you learned about that, did you not, from fellow employees that this was kind of an unwritten rule; right?

A I would say that is correct, that is correct, yes, sir.

Q And it wasn't from Mr. Graber that you first heard about this kind of unwritten rule; right?

A That is correct.

Q It was from other people; right?

A At that time, yes, sir.

3am3 ek/ss

(Tr. pp. 351 - 355)

Q Right.

Did Mr. Graber ever demand of you a one percent contribution?

A He did give me a card, if you want to call that demand. I wouldn't want --

Q What I want to know is did he ever say, Look, you're not going to get that Dock Master's job if you dont give me one percent?

A No, that, that he didn't do.

Q Did he ever threaten you in any manner if you didn't make a contribution that you would be in any kind of trouble?

A No, sir.

Q Did he ever instruct you to threaten anybody who was employed under you?

A No, sir, he didn't.

Q Now, if a man, as you say, is short you would send him to see Mr. Graber: Right?

A That is correct.

Q And you don't know what conversation, if any, took place between that man and Mr. Graber: right?

A No, sir, I wasn't present, no.

Q Right.

By the way, in 1973 -- okay?

A Uh-hum.

Q You received cards: Right?

A That is correct.

Q Not a sheet of any kind, cards, right?

A No, sir, it was cards.

MR. SUTTER: May I have the exhibits, please.

(Documents were handed to Mr. Sutter.)

MR. SUTTER: Thank you.

Q And on the card was written the man's name?

A I believe it was his name, his salary, and I believe that was the year that it also had the one percent written on it.

Q Okay.

Now, did they have the grades, if you recall?

A I actually do not recall whether they did or didn't.

Q Let's get into that:

In the classified service, in the state, you have grades, right?

A That is correct.

Q And the higher the grade the higher the salary?

A Yes, sir.

Q And do you recall whether or not they had the

years in service in that grade on the card?

A I don't believe they had, no.

Q Okay.

I'm going to show you Government's Exhibit 12, with the Court's permission, and see if this helps refresh your recollection in any manner.

Okay?

A All right.

MR. SUTTER: May I approach the witness, your Honor.

THE COURT: Yes.

MR. SUTTER: Thank you, sir.

Q Take your time and look at it.

Okay, you had a chance to look at it?

A Yes.

Q Fine.

Is that the same size of card that you dealt with?

A Er, to be honest I thought it was smaller. This could have been the same size, though.

Q All right.

That exhibit does not have one percent figure on it, does it?

A No, sir, it don't.

Q But the ones that you received had a one percent figure?

A Yes, I believe there was one that did.

Q And it wasn't a whole sheet that you received, it was these individual index cards, if I may call them that.

A Yes, cards similar to this.

Q And that was in 1973?

A The one I believe that had the one percent was '73.

Q Now, when you say the one, you mean the one series of cards or --

A That year, right, all of the cards had, that one year.

Q Was that put on in pen?

A To tell the truth I think the whole card was written in pen.

Q It wasn't typed?

A No, I think it was written like with a felt tipped.

Q You don't know who wrote those cards, do you?

A No.

Q Sir -

A Yes, sir.

Q Were you ever instructed to deny any employee any privilege if he failed to contribute one percent?

A No, sir.

Q Mr. Graber never told you that, did he?

A No, sir.

Q And you just kind of knew this was the name of the game, you kicked in a one percent?

A I would say that, all right.

Q No threats?

A No, not in my experience.

Q None to you?

A No, sir.

* * *

EXCERPTS OF MR. OLIVIERI'S TESTIMONY (Tr. pp. 357-360)
(pp. 246a-247a)

(Tr. p. 357)

Q Mr. Olivieri, by whom are you employed?

A The Town of Hempstead, Department of Conservation and Waterways.

* * *

(Tr. pp. 358 - 359)

Q In September or and October of these years, 1971 through 1974, did you ever have occasion to meet Mr. Harrington concerning political contributions?

A Yes, he used to come around and give us an index card that was sent over with the one percent of our salaries.

Q What years did Mr. Harrington pass these cards out with the one percent figure on it?

A Every year but last year, if I remember correctly.

Q Would these include the years '71 through '74?

A Yes.

Q And whom did you receive the cards from?

A Mr. Harrington.

* * *

(Tr. pp. 359 - 360)

Q Now, what information, if you can recall, was on these cards?

A I remember my name was on the outside and it was folded and it was one percent of my salary figured out.

Q Now in other words you recall being on these cards?

A Yes, sir.

Q When you say one percent of your salary, what do you recall, in other words --

A The exact amount, you know, right down to the penny.

Q Was that so for every year?

A Yes.

Q Now, as a result of receiving those cards, what if anything did you do after you received those cards?

A I would turn in one percent over at the Conservation and Waterways building to Mr. Graber.

Q Now, did you do that in every year, 1971 through 1974?

A Yes.

Q Is it your testimony that every year you gave your check to Mr. Graber?

A Yes.

* * *

(Tr. p. 363)

EXCERPTS OF TESTIMONY OF MR. GUMA (Tr. pp. 363-376) (pp. 248a-254a)

Q Mr. Guma, by whom are you employed?

A Town of Hempstead.

* * *

(Tr. pp. 366 - 370)

Q Can you tell us what conversation you had with Mr. Graber when you were in the building?

A Well, I asked him about the day job. And he said, well -- well, he'll talk to me outside about it. He took me outside of the building and started to explain to me about the job. And he said he couldn't do nothing for me right now. And then he started telling me almost the facts of life, you know, about the job. You know, he said something about the contribution of one percent. He said if I didn't do anything -- if I didn't pay the one percent, he couldn't do it for nothing for me.

Q Now, what happened after you had this conversation with Mr. Graber?

A He just left. And he went in his office.

Q Now, prior to '73, had you ever made a contribution of one percent to the Town of Hempstead Republican Finance Committee?

A No.

Q After this conversation with Mr. Graber outside of the building, did you see him again shortly thereafter?

A Yes. I seen him the next day.

Q And please, in your own words, describe what happened.

A Well, I went up to him and I gave him the money order for -- I forget what it was. $75 I think it was. And he said, no, he couldn't accept it. And he went back in his office. He said he couldn't do nothing for me. Then he went back in his office.

Q After that, what did you do? I mean after he said that, what did you do?

A I went in the car. I went home. I was a little upset. And I went home.

Q Did there come a time that you either heard from or spoke to Mr. Graber again?

A Yes. A few days later he called me back and

he said he could accept it now and took the money order from me.

Q Where did he call you, if you can recall?

A I was working nights. I was working four to twelve. And he called me in the intercom. I don't remember. I think he called me in the intercom. He called me in the office.

Q What do you recall him saying when he called you on the intercom?

A He said -- just said he wanted to talk to me in the office or something. And I gave him the money order in his office.

Q Was that afterwards?

A Yes.

Q Now, when you gave him the money order, do you recall anything about giving him the money order?

A No. He just took it off me. That was it.

Q Do you recall whether or not the money order had been addressed to the proper person?

A Yes. He told me -- I think it was the next day after that, that I worded it wrong. I wrote down Nassau County Republican Finance Committee. And he said it's supposed to be Town of Hempstead Republican Finance Committee.

Q What did you do with the money order?

A I got a new money order from the bank and I gave it back to him.

Q Let me show you an exhibit.

THE CLERK: Marked for identification as Government Exhibit 18.

MR. CADEN: Thank you.

THE WITNESS: That's it.

Q Let me ask you to look at the exhibit and ask you if you can identify it.

A Just the money order. What is this? The receipt. That's the money order I gave him for 75.

Q Is that the money order or the receipt?

A The receipt, rather.

Q Okay. And is that for the $75 which you indicated that you had given to Mr. Graber?

A Yes.

Q Now, did anything occur after -- now, is that -- does that $75 represent one percent of your salary?

A Then it did. Yes.

Q After you gave that money order to Mr. Graber, did you get the job?

A Yes.

Q When?

A A few months later.

Q I mean you obtained a position?

A As a laborer in the marina. Yes.

Q Did you make any other contributions?

A Yes.

Q To the Town of Hempstead Republican Finance Committee that year?

A Yes. I think in October, November. I think it was October. I think it was for $81.

Q Can you recall the circumstances under which you gave that?

A No. I just went to the -- I think it was the post office and I got a money order and I gave him the $81.

Q Who is he?

A Mr. Graber.

* * *

(Tr. pp.373 -374)

Q Now, when you went to Mr. Graber because you didn't want to be a night watchman, he at that time never mentioned anything to you about one percent contribution, did he?

A He did, too. Yes, he did.

Q The first time?

A The first time. Yes, he did.

Q Oh, he did?

A Yes.

Q And did you have occasion to report that to anybody?

A Yes. A few people afterwards.

Q Who?

A In the marina that I was working.

Q Who?

A The dockmaster then.

Q Who was that?

A Joe Hooks, I told. I told a few other people. I don't remember. A few people were upset.

Q Were you incensed about it?

A Yes. I was mad.

Q Did you ever go to the Nassau District Attorney's office or to the United States Attorney's office concerning that?

A Yes, I did.

Q When?

A Last weak.

Q Last week. And this occurred when?

A Three years ago.

Q Did you have trouble finding those offices?

MR. CADEN: I object to the argument.

THE WITNESS: I don't understand.

Q Did you actively go to any law-enforcement personnel?

A No.

A No, I like him.

Q Well, he disciplined you, did he not?

A What do you mean, disciplined?

Q When you were letting your friends in at the marina, when you were the night watchman.

A That's right. That's correct.

Q And you were doing that, right? What I am getting at, Mr. Guma, you got a little bit of an axe to grind here with Mr. Graber, do you not?

A That was all solved. That was a while back.

Q Despite the fact that you were disciplined by him for that, you still got the promotion, didn't you?

A Yes.

Q And the first time Mr. Graber wouldn't take the contribution, is that right?

A That's right.

Q And then you come back again and ask him about it, and he said, okay, I'll take it now?

A Yes.

Q You asked him about it, right?

A No, I didn't ask him. He called me up.

Q What did he say? "Where is your 75 bucks"?

A No, he never said that.

Q What I am getting at, Mr. Guma, is, he might have mentioned to you something about contributions, but he never demanded it of you, did he?

A No, he didn't.

(Tr. p. 380)

EXCERPTS OF TESTIMONY OF MRS. KEENE (Tr. pp. 380-392) (pp. 255a-258a)

Q Good morning, Mrs. Keene.

By whom are you employed?

A The Town of Hempstead.

Q By what governmental agency?

A Department of Conservation of Hempstead.

* * *

(Tr. pp. 382 - 383)

Q I see. Now, in the fall of those years, meaning in the fall of '71, '72, and '73, have you had occasion to speak with Mr. Graber concerning employee contributions to the Republican Party?

A Yes. He came to me those years and said he wanted me to remind my people that it was time to contribute.

Q Now, I am directing your attention to -- is that so for all three years, Mrs. Keene?

A Yes.

Q I am directing your attention to '71. Is that the first year that you can recall Mr. Graber came to you and asked you?

A No. I really don't recall when he first came. But I know at that time I did have at least two people under me and he did come in that year.

Q Did you ever say anything to him about reminding people or asking people to make contributions?

A Well, I remember one year he came in with a list and he had the people -- all of us listed, including myself, with the amount that we were to give. And he said, "I'd like you to remind your people."

And I said, "Why do I have to do it?"

Well, he said, "You're the supervisor. So it's your job."

Q Do you recall what year about that was?

A Well, that was either '71 or '72. But I -- in those years. After that I know he always reminded me from then on. Whenever it did start, I am not sure.

Q And in those years, did he give you anything -- I mean in '71, '72, '73?

A I remember very specifically in '72 and '73, I was given a handwritten list with the four names on it. And in one year I know it had the one percent listed. The other year, I am not sure whether it was the one year or the total salary.

Q Now, who gave you these lists?

A Mr. Graber.

* * *

(Tr. p. 384)

Q Can you describe these pieces of paper that you referred to with the names of your employees, your subordinates?

A Well, they weren't -- it wasn't even a whole sheet of paper. They were possibly the bottom part of a piece of paper cut off or something. And it had the four names

listed on them with -- now, one year I definitely remember that the one percent was on it.

Q Meaning what, in other words?

A Of our salary.

Q Just one percent of that salary?

A Yes.

Q And the other years?

A I don't remember. Well, that was '72, say, and '73. I don't remember if it was one percent or the total salary.

* * *

(Tr. p. 385)

Q Well, what would you do after you received these pieces of paper or these lists from Mr. Graber? What would you do as the supervisor?

A Well, I would usually walk right out of my office into the laboratory and say to my people, "Well, it's time again. Elections are coming. Time to make contributions."

I'd say Mr. Graber reminded me to tell you.

Q Did you make contributions in those years to the Town of Hempstead Republican Finance Committee?

A Yes.

Q In years prior to '71 as well?

A Every year that I worked I did.

* * *

(Tr. p. 389)

Q Okay. When you started to work in 1966, Mr. Graber was not employed by the Town of Hempstead, to your knowledge, was he?

A That's right. You're right. Yes.

Q And when you first heard about this one percent stuff, you heard it from fellow employees, correct?

A That's correct, yes.

Q It wasn't from Mr. Graber?

A No.

* * *

(Tr. pp. 391 - 392)

Q Did Mr. Graber ever tell you that if you didn't kick in, you wouldn't get a promotion?

A I don't think he ever told me specifically. No.

Q When you first got the job, were you ever told that if you didn't make political contributions you wouldn't get the job?

A No, I wasn't told that.

Q You get the job on merit and qualifications, correct?

A I like to think so.

Q Well, you are qualified, aren't you?

A Yes sir.

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